

SMALL BUSINESS IMPACT STATEMENT FORM

1. Our agency has determined that the rules we are proposing have the following type of impact on small businesses:

- ☒ Direct impact *(please complete remainder of form)*
☐ Indirect impact *(please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered)*
☐ No impact *(please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered)*

2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:

Narrative is attached

3. What is the basis for the enactment of the rules(s)?

- ☐ Required to meet changes in federal law
☐ Required to meet changes in state law
☐ Required solely due to changes in date (i.e. must be changed annually)
Other: Required to ease gasoline supply concerns, educate the public on their gasoline purchase options, and clarify gasoline standards in the State of South Dakota

4. Why is the rule(s) needed?

The proposed rules are needed to allow the sale of 85 octane fuel throughout South Dakota to avoid fuel supply concerns; to require proper labeling to adequately inform purchasers about the possible implications of their fuel purchases; and to allow state inspectors to conduct inspections relating to compliance with federal and proposed state rules regarding documentation and record retention.

5. What small businesses or types of small businesses would be subject to the rule?

Fuel Retailers and Fuel Distributors

6. Estimate the number of small businesses that would be subject to the rule.

- ☐ 1-99 ☐ 100-499 ☒ 500-999* ☐ 1,000-4,999 ☐ More than 5,000
☐ Unknown - please explain _____

* An estimated 900 fuel retailers would be affected by these rules; an indeterminate number of distributors would be affected. DPS believes that not all SD distributors meet the definition of small business.

7. Are small businesses required to file or maintain any reports or records under this rule?
☒ Yes ☐ No

a. If "yes," how many reports must a small business submit to the state on an annual basis?

None

b. If "yes," how much ongoing recordkeeping within the business is necessary?

Each business is required to keep the octane confirmation documentation provided by its suppliers, with the date and time of the sale to the business, on the business premises for one year.

c. If "yes," what type of professional skills would be necessary to prepare the reports or records?

☒ The average owner of a small business should be able to complete the reports and/or records with no assistance

☐ It is likely that a bookkeeper for a small business should be able to complete the reports and/or records

☐ It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records

☐ It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records

☒ Other No professional skills are required, completed documents from sales of fuel to the business must simply be kept for one year.

☐ Unknown - please explain _____

8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?

☒ No - please explain: This rule simply mandates at the state level what is already required by federal regulation, and will allow for an expeditious state inspection process. No additional recording keeping will be required beyond what is already required by the Federal Fuel Rating Rule.

☐ Yes - please explain _____

6-15-2012
Dated


Authorized Signature

Sid Department of
Name of Agency

Public Safety

Small Business Impact Statement Narrative Regarding Retailers and Distributors

Under the proposed rules, when a small fuel retail or gas station business owner receives a shipment of fuel to their establishment, they must keep a record of the name of the product purchased; the grade of the product; the quantity; and, if applicable, the automotive fuel rating and oxygenate type and content; the names and addresses of the buyer and seller; and the date and time of the sale. These records must be kept at the business site for one year. These records requirements are simply a state adoption of record keeping requirements that already in effect at the federal level.

Retailers would also, under the proposed rules, have to place the mandated warning "Attention: This octane level may not meet minimum manufacturer specifications. Consult your owner's manual before fueling" on pumps that provide 85 or 86 octane gasoline. Retailers are also required under the proposed rules to post that 85 or 86 octane gasoline is a "sub-regular" fuel.

Distributors of fuel would be required to certify, in the manner prescribed by federal regulations, the automotive fuel rating of each transfer of fuel they make to anyone other than a consumer. Distributors are also required, under the proposed rules, to keep any documentation on which they based their fuel rating certification for one year. Distributors must also keep records of any fuel rating determinations they made for one year. Again, these record keeping requirements are already mandated under federal regulation, and are now simply being adopted at the state level.

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency**

	CODE	NAME
DEPARTMENT	14	Department of Public Safety
DIVISION	1410	Division of Legal and Regulatory Services
PROGRAM	14411	Office of Weights and Measures

PROPOSED RULE: Copy attached

Hearing Date: July20, 2012

FISCAL IMPACT STATEMENT: The fiscal impact shall be to the Department of Public Safety. This impact will be the costs associated with more stringent and on-going octane compliance inspections. Initial costs include the purchase of field octane testers and calibration for those testers; annual compliance inspections, which also necessitate additional travel for state inspectors; fuel samples; proper packaging for fuel samples; the costs associated with shipping or delivering fuel samples for analysis; and lab fees for octane analysis tests on submitted samples.

The Department will be purchasing tow Zeltex octane testers. Calibrations for these testers are recommended twice annually. State inspectors working for the Office of Weights and Measures shall conduct approximately 150 octane inspections per year. An estimated 100 inspections shall take place during the already established biennial pump inspections. An additional 50 inspections shall be done on pumps whose normal inspections were completed the previous year. If field testing suggests octane levels outside of accepted parameters, samples shall be purchased and shipped to contracting out of state laboratories for in-depth analysis.

The calculations for all these expenses are attached.

FISCAL NOTE SUMMARY: The Department of Public Safety is the only governmental entity that will experience a fiscal impact due to the promulgation of the proposed rules.

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
Department of Public Safety	\$47,673	\$17,990
TOTAL	\$47,673	\$17,990
Local Subdivisions:		
TOTAL	\$0	\$0
Small Businesses		
TOTAL	\$0	\$0

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business		
Fuel Retailers	Negligible	Negligible
Fuel Distributors	Negligible	Negligible
TOTAL	Negligible	Negligible

APPROVED

Signature Department Secretary or Board or Commission Chairman

DATE

7/10/12

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, 5) small business impact statement

20:01:09:01.01 Retail dispenser labeling. Each retail fuel pump shall identify conspicuously the type of fuel product, the particular grade of the fuel product, and the applicable automotive fuel rating of the fuel to be dispensed. Any sub-regular grade, as defined in 20:15:06:01.01, shall be conspicuously identified as sub-regular grade, and the pump shall state: "Sub-Regular Octane-Refer to owner's manual before fueling."

General Authority: SDCL 37-2-6 (4)

Law Implemented: SDCL 37-2-6 (4), 37-2-13

Source:

20:01:10:03 Documentation. If gasoline, alcohol blended fuels, kerosene, diesel fuel, aviation gasoline, burner oil, or naphtha are sold an invoice, bill of lading, shipping paper or other documentation shall accompany each delivery other than a retail sale. This document shall identify the quantity, the name of the product, the particular grade of the product, the applicable automotive fuel rating, and oxygenate type and content (if applicable), the name and address of the seller and buyer, and the date and time of the sale. Documentation must be retained at the retail establishment for a period of not less than one year.

General Authority: SDCL 37-2-6 (2); 37-2-7

Law Implemented: SDCL 37-2-6 (2), 37-2-7, 37-2-19, 37-2-21

Source:

20:01:10:04 Duties of refiners, importers, and producers. A refiner, importer, or producer of petroleum products, as defined by SDCL 37-2-5 (10), shall comply with the automotive fuel rating, certification, and record-keeping requirements of Code of Federal Regulations, title 16, sections 306.5 to 306.7.

General Authority: SDCL 37-2-6 (2), 37-2-7

Law Implemented: SDCL 37-2-6 (2), 37-2-7, 37-2-13, 37-2-21

Source:

20:01:10:05 Duties of distributors. A licensed distributor of petroleum products, as defined by SDCL 37-2-5(10), shall comply with the certification and record-keeping provisions of Code of Federal Regulations, title 16, sections 306.8 and 306.9.

General Authority: SDCL 37-2-6 (2), 37-2-7

Law Implemented: SDCL 37-2-6 (2), 37-2-7, 37-2-13, 37-2-21

Source:

20:01:10:06 Duties of retailers. A person responsible for the product who sells or transfers petroleum products, as defined by SDCL 37-2-5 (10), to a consumer shall comply with the automotive fuel rating posting and record-keeping requirements, and the label specifications of Code of Federal Regulations, title 16, sections 306.10 to 306.12.

General Authority: SDCL 37-2-6 (2), 37-2-7

Law Implemented: SDCL 37-2-6 (2), 37-2-7, 37-2-13, 37-2-21

Source:

20:15:06:01.01 Minimum octane rating. In general conformity with ASTM D4814 and the adoption of NIST Handbook 130, 2005 in § 20:01:02:03, the minimum (R+M)/2 octane rating grades of petroleum products, as defined by SDCL 37-2-5 (10), in the section of the State of South Dakota west of the 102nd meridian, shall be no less than the following:

1. Sub-Regular Unleaded 85;
2. Sub-Regular Unleaded 86;
3. Regular Unleaded 87;
4. Midgrade, Plus Unleaded 89; and
5. Premium, Super, Supreme, High Test Unleaded 91.

The minimum (R+M)/2 octane rating grades of petroleum products in the section of the State of South Dakota east of the 102nd meridian, shall be no less than the following:

1. Regular Unleaded 87;
2. Midgrade, Plus Unleaded 89; and
3. Premium, Super, Supreme, High Test Unleaded 91.

General Authority: SDCL 37-2-6 (4)

Law Implemented: SDCL 37-2-6 (4)

Summary of Transcript of Public Hearing
Held by the South Dakota Department of Public Safety
On July 20, 2012

The public hearing held on July 20, 2012 was for the purpose of taking public comment and soliciting information regarding proposed administrative rules, which would allow the sale of 85 octane gasoline in the State of South Dakota. The hearing was moderated by Jason Glodt, from the Office of the Governor, Jenna Howell and David Pfahler, both from the Department of Public Safety. Trevor Jones, the Secretary of the Department of Public Safety, gave introductory, welcoming remarks and reopened the hearing after breaks. Eleven speakers gave oral comment at the hearing; their comments are summarized as follows:

Bill Woebkenberg, representing the Alliance of Automobile Manufacturers, opposed the sale of 85 or 86 octane fuel in South Dakota. He stated that anything less than 87 octane is incompatible with current and evolving automobile technology.

John Cabaniss, representing the Association of Global Automakers, stated that South Dakota should maintain the current rules and that 87 was the necessary minimum for modern vehicles. He did not address 86 octane.

Monica Mainland, representing Exxon Mobil, stated that requiring a minimum 87 octane would make shipping fuel to South Dakota difficult and would probably raise costs to end consumers.

Tom Taylor, representing Sinclair, supported allowing the sale of 85 octane. He stated that there have been no issues caused by the use of 85 octane. Preferred no additional labeling.

Tom Byers, representing Magellan Midstream Partners, opposed the sale of 85 octane in eastern South Dakota. He stated that allowing 85 could cause a shortage.

Andy Howes, representing Howe's Oil, indicated that his initial preference had been a state-wide ban of 85 octane, but he recognized the supply concerns and felt some compromises would be appropriate; also supported varying label requirements.

Jim Wahle, representing South Dakota Farmers Union, supported dividing the state at the traditional 102 meridian and allowing 85 in the west, but having a minimum of 87 in the east. Supported labeling.

Gary Duffy, representing the South Dakota Corn Growers Association, opposed allowing the sale of 85 octane, except in emergency situations. Supported labeling.

Ron Lamberty, representing the American Coalition for Ethanol, who is also a convenience store owner, supported a ban of 85 in eastern South Dakota, and was

somewhat unclear about his support for 85 in western South Dakota. Supported labeling.

Dawna Leitzke, representing the South Dakota Petroleum and Propane Marketers Association, espoused the view that 85 should be allowed west of the 102 meridian, but not east. Opposed additional labeling.

Gil Moyle, representing Moyle Petroleum, appeared to support the sale of 85 octane west of the 102 meridian, and not east. Opposed additional labeling.

Summary of Public Comment Received by
The Department of Public Safety Regarding 85 Octane in South Dakota

The Department of Public Safety, Office of Weights and Measures, received 78 pages of written comment pertaining to the 85 Octane Public Hearing held in Pierre on July 20, 2012.

The comments are broken out as follows:

Citizen opposed to sale of 85 octane:	13
Company opposed to sale of 85 octane:	11
Citizen Support of 85 octane:	5
Company Support of 85 octane:	5
Citizen opposed to boundary line:	2
Company Support to boundary line:	2
Citizen felt punishment was deserved:	5
Unclear statement toward/against 85:	1

Sinclair Oil, based in Utah, submitted 291 pages of emails regarding outages. These emails pertained to the following 45 locations, 7 of which are located directly in the state of South Dakota: Magellan - Bettendorf, Doniphan, Milford, Lincoln, Sioux City, Dubuque, Mason City, Waterloo, Des Moines, Iowa City, Palmyra Missouri, Mankato, Saint Joseph, Fargo, Sioux Falls, Rochester, Watertown and Omaha; NuStar - Milford, LeMars, Norfolk, Geneva, Columbus, Aberdeen, Mitchell, Jamestown, Wolsey, Sioux Falls, Yankton and Osceola; Sinclair -Fort Madison; Conoco - Pleasant Hill, Lincoln, Oklahoma City, Bettendorf; COP Lincoln; CHS Council Bluffs, McPherson; Phillips 66 - Lincoln; Teppco Cape Girardeau, Salt Lake City, Tulsa Holly, Flint Hills, Casper and Carrolton.

Review all sections indicate the following numbers:

Low on Product:	85
Out of Product:	144
Testing/work/computer/repairs/pipe line service &/or delays:	30
Changes in allocations:	15
Other:	12

Full public comments and other information pertaining to the 85 octane issue in South Dakota can be viewed at the following locations:

www.dps.sd.gov

<http://www.dps.sd.gov/85octane.aspx>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH DAKOTA
PUBLIC HEARING REGARDING 85-OCTANE RULES

Transcript of Proceedings
Friday, July 20, 2012
Capitol Lake Visitors Center
Pierre, SD
=====

MODERATORS

JASON GLODT, Office of the Governor
JENNA HOWELL, Department of Public Safety
DAVID PFAHLER, Office of Weights and Measures

SPEAKERS

TREVOR JONES, Secretary, Department of Public Safety
JASON GLODT, Office of the Governor
JENNA HOWELL, Department of Public Safety
BILL WOEBKENBERG, Alliance of Automobile Manufacturers
JOHN CABANISS, Association of Global Automakers
MONICA MAINLAND, Exxon Mobil, Billings, MT
TOM TAYLOR, Sinclair, Denver, CO
TOM BYERS, Magellan Midstream Partners, Tulsa, OK
ANDY HOWES, Howes Oil
JIM WAHLE, SD Farmers Union
GARY DUFFY, SD Corn Growers Association
RON LAMBERTY, American Coalition for Ethanol
DAWNA LEITZKE, SD Petroleum & Propane Marketers
Association
GIL MOYLE, Moyle Petroleum

Reported by Carla A. Bachand, RMR, CRR, Capital Reporting
Services, P.O. Box 903, Pierre, SD 57501 (605) 224-7611.

COPY

85-Octane Rules Hearing

<p style="text-align: center;">2</p> <p>1 FRIDAY, JULY 20, 2012</p> <p>2 MR. JONES: Good morning, everybody. Welcome to the</p> <p>3 capitol city. We are pleased to see so many of you, I wish</p> <p>4 some of you would have brought some rain with you. My name is</p> <p>5 Trevor Jones, T-R-E-V-O-R J-O-N-E-S. You are probably</p> <p>6 wondering why did he spell his name? If you come up here and</p> <p>7 make public comments, it's important we have an accurate record</p> <p>8 and Carla will be recording all that is said here at the</p> <p>9 microphone and from the moderators; so when you get up here,</p> <p>10 take a few seconds, spell your name so Carla records it</p> <p>11 accurately.</p> <p>12 Also when you are up here, too, try to speak concisely</p> <p>13 and slowly so she doesn't miss anything. A lot of times,</p> <p>14 including myself, we talk way too fast; so we just want to make</p> <p>15 sure as far as the recording of your statements, we want it</p> <p>16 accurately and we want to move as smoothly as possible because</p> <p>17 if you do speak too fast, as I'm probably doing now for Carla,</p> <p>18 she will stop and ask you to repeat it. This will just help.</p> <p>19 Many of you have done this before in the past, and I appreciate</p> <p>20 you coming this far and providing us some good factual</p> <p>21 information regarding the sale of 85 here in South Dakota.</p> <p>22 I serve at the pleasure of Governor Dugaard as the</p> <p>23 Department of Public Safety Secretary, and so part of the</p> <p>24 proceedings, you will hear questions from members of the staff</p> <p>25 of the Department of Public Safety as you provide factual</p>	<p style="text-align: center;">4</p> <p>1 Howell, legal counsel for the Department of Public Safety, and</p> <p>2 Dave Pfahler, who is the director of weights and measures for</p> <p>3 South Dakota. Before I turn it over to Jenna to explain more</p> <p>4 about the process, the rules process, I will give you a very</p> <p>5 brief background in regard to why we are here. I know most of</p> <p>6 the people in this room know why we are here; so I will keep it</p> <p>7 very short.</p> <p>8 As you know, this past spring we discovered that some</p> <p>9 gas stations were labeling, mislabeling 85-octane as 87-octane,</p> <p>10 and the state acted immediately to stop that practice of</p> <p>11 mislabeling, and evidence from that was turned over to the</p> <p>12 attorney general and the state's attorneys for further action</p> <p>13 based on their authority.</p> <p>14 During that investigation of the mislabeling, the</p> <p>15 Department of Public Safety made a surprising discovery, which</p> <p>16 is that technically 85-octane is illegal in the entire state of</p> <p>17 South Dakota. I say surprising because 85-octane has been sold</p> <p>18 in South Dakota since the fifties or maybe even longer than</p> <p>19 that, and primarily it's only been sold in western South</p> <p>20 Dakota, but for a three- to four-month period, because of</p> <p>21 market issues largely, the 85-octane migrated east to eastern</p> <p>22 South Dakota and was found throughout eastern South Dakota for</p> <p>23 really those winter months until the investigation started.</p> <p>24 I also say it was a surprising discovery because</p> <p>25 there's no history of the legislature actually debating whether</p>
<p style="text-align: center;">3</p> <p>1 information. Along with Carla recording all the statements</p> <p>2 that are made here today, there's an audio recording as well</p> <p>3 that eventually will be posted just like as at a previous</p> <p>4 meeting we had earlier in April of 2012. So there will be a</p> <p>5 couple different ways to actually access information once the</p> <p>6 the proceeding is finished today.</p> <p>7 We will go along as needed, depending on how many</p> <p>8 individuals come up here and visit with us to provide that</p> <p>9 information. As you know, there are guidelines to the hearing.</p> <p>10 They were laid out earlier and posted on our web site. We do</p> <p>11 want to gain as much information as possible, but we also too</p> <p>12 have limits on time; so we are asking that you try to keep your</p> <p>13 comments brief, 10 minutes, and that includes questions from</p> <p>14 the moderators over to my left.</p> <p>15 I think that's all I have for now as far as kickoff.</p> <p>16 Thank you again for coming. Thank you again for providing</p> <p>17 information that's important regarding the sale of 85-octane</p> <p>18 here in South Dakota. We look forward to that information, we</p> <p>19 look forward to reviewing that information and subsequently</p> <p>20 making that recommendation to the legislative rules committee</p> <p>21 that will meet later on next month. Thank you again. Please</p> <p>22 travel safe when you go home, and continue to pray for rain.</p> <p>23 I'll turn it over to the panel.</p> <p>24 MR. GLODT: Thank you, Secretary Jones. I am Jason</p> <p>25 Glodt, senior advisor to Governor Dugaard, and we have Jenna</p>	<p style="text-align: center;">5</p> <p>1 or not octane should be illegal in South Dakota, and past legal</p> <p>2 reviews, for example, 2004 when Dave started, they did do a</p> <p>3 legal review and it was determined that the Department of</p> <p>4 Public Safety did not have the authority to enforce or to ban</p> <p>5 85-octane in the state. And based on this investigation,</p> <p>6 additional legal review was conducted and it was determined</p> <p>7 that the state did now have the authority to regulate and</p> <p>8 subsequently, because of the adaptation of standardized rules</p> <p>9 to ASTM and NIST, that through adoption of those national</p> <p>10 standards, that 85-octane had been in fact made illegal.</p> <p>11 But when you look at the legislative, the bill and the</p> <p>12 legislation that gave DPS that authority, if you listen to the</p> <p>13 legislative committee hearings, not one word was mentioned</p> <p>14 about octane. So the legislative intent of banning octane,</p> <p>15 85-octane statewide was clearly not there. It was an</p> <p>16 unintended consequence of a bill that gave DPS clear authority</p> <p>17 to adopt NIST standards that really, in conjunction with ASTM,</p> <p>18 resulted in it technically being illegal.</p> <p>19 The Governor looked at that and said we need to</p> <p>20 determine what the repercussions of following that strict</p> <p>21 technical meaning of the law would be. And we quickly realized</p> <p>22 that banning 85-octane in South Dakota would have serious</p> <p>23 repercussions and that there would be fuel shortages, and if</p> <p>24 not actual outages, it would have a traumatic impact on the</p> <p>25 price of fuel, especially west river, especially during our</p>

85-Octane Rules Hearing

<p>6</p> <p>1 tourism season in the summer months.</p> <p>2 And we had received word from refiners that said</p> <p>3 simply if you ban 85-octane in South Dakota, we will stop</p> <p>4 providing you product. You don't have to buy our product. And</p> <p>5 the result of that is going to be outages and shortages,</p> <p>6 especially in western South Dakota. So to avoid that from</p> <p>7 happening, the Governor proceeded with a plan that included the</p> <p>8 adoption of emergency rules, which only have effect of 90 days,</p> <p>9 to get us through the summer so that 85-octane can continue to</p> <p>10 be sold in South Dakota so long as it's properly labeled with</p> <p>11 the labels that are currently in those emergency rules</p> <p>12 identifying what it is and to notify consumers that they should</p> <p>13 refer to their owner's manuals before fueling, because as I</p> <p>14 think you will hear soon, no engine manufacturer or auto</p> <p>15 manufacturer will recommend use of octane less than 87; so</p> <p>16 that's why we have the labels, and also understanding that we</p> <p>17 need to address a law via permanent rules, which is why we are</p> <p>18 here today.</p> <p>19 And we have recommended permanent rules, but we also</p> <p>20 understand that that's the starting point and those rules are</p> <p>21 subject to change based on the comment period and what we hear</p> <p>22 today and the 10 days of comment that we will receive after</p> <p>23 this. It's my understanding we only have about seven or eight</p> <p>24 people actually wanting to comment today. We hope to encourage</p> <p>25 much, much more comment than that. I think everybody realizes</p>	<p>8</p> <p>1 to accommodate and have them go first and they volunteered to</p> <p>2 go first, but thereafter if it would work, it would be nice to</p> <p>3 follow the supply line so petroleum products from start to</p> <p>4 finish. We can go through that line so starting with comments</p> <p>5 from refiners, pipeline companies, the suppliers or</p> <p>6 wholesalers, then retail gas stations, any other associations</p> <p>7 or organizations thereafter, consumers and so on. Everybody</p> <p>8 has the opportunity to comment, but I think it would provide</p> <p>9 more structure if we did it in a manner which we can follow the</p> <p>10 product from start to finish as we go through that. With that,</p> <p>11 I've talked long enough, I'll turn it over to Jenna Howell for</p> <p>12 further comments about the process.</p> <p>13 MS. HOWELL: Good morning. I just wanted to provide a</p> <p>14 brief summary of where we are in the rules process. As Jason</p> <p>15 said, there are emergency rules currently in effect. We filed</p> <p>16 those with the Secretary of State earlier this month. They</p> <p>17 will be in effect for 90 days. The hearing process that we are</p> <p>18 here to go through today is for our permanent rules. As Jason</p> <p>19 also said, we have proposed permanent rules, which will be</p> <p>20 available if anybody needs a copy, they are also posted on our</p> <p>21 web site, which is dps.sd.gov, if anybody has not had a chance</p> <p>22 to review those.</p> <p>23 What we will do at this hearing is take all the</p> <p>24 comments. As Jason said, we are hoping to get a lot of</p> <p>25 comments, a lot of factual information from all sides of this</p>
<p>7</p> <p>1 that you don't have to be here in person today to provide that</p> <p>2 comment and that it can be done so in a written format, which</p> <p>3 Jenna will explain in more detail after I'm done talking.</p> <p>4 The emergency rules are in effect now. We have found</p> <p>5 some gas stations that were not complying, but they are working</p> <p>6 with us. Those we have notified, and I believe Dave will</p> <p>7 correct me if I'm wrong, but we have yet to have a gas station</p> <p>8 tell us that they will not comply or refuse to comply with</p> <p>9 those emergency rules. There were some late complying, but</p> <p>10 they are complying when notified by the Department of Public</p> <p>11 Safety that they need to do so.</p> <p>12 Really the purpose today is, as we move forward, to</p> <p>13 try to determine what the right rules are for 85-octane. It's</p> <p>14 to find out what the truth is. We want to know what the truth</p> <p>15 is on impacts to engines and at certain elevations, the supply</p> <p>16 network, and some people may say that supply issues are</p> <p>17 exaggerated, some people say supply issues are very real. We</p> <p>18 need to get to the bottom of that and what are the real supply</p> <p>19 issues, and we want to make sure that consumers are protected</p> <p>20 and that they have proper information so that when they are</p> <p>21 buying a product, they know exactly what they are buying and</p> <p>22 what the impacts are, and hopefully that will come out today.</p> <p>23 And as we go through today, I think to give it some</p> <p>24 structure, of course we will take volunteers and I know Jenna</p> <p>25 will explain, we have people with travel arrangements we want</p>	<p>9</p> <p>1 debate. Then we will open -- we have opened a written comment</p> <p>2 period that will last for 10 days after this hearing. You can</p> <p>3 send them via hard mail. We have an e-mail address that was</p> <p>4 posted on our web site where you can submit electronic</p> <p>5 comments. We are keeping all of those together, we will review</p> <p>6 all of them, they will be considered just as much as the live</p> <p>7 testimony here today.</p> <p>8 After that period closes, we will then look at our</p> <p>9 rules that have already been proposed, we will look at the</p> <p>10 comments, we will look at the information we have gained</p> <p>11 through this process and we will then make a final</p> <p>12 determination and recommendation of rules that we will ask the</p> <p>13 interim rules committee of the legislature to pass or to</p> <p>14 approve hopefully at their August 14th meeting.</p> <p>15 So that is our plan, and I appreciate you all coming</p> <p>16 here today and we look forward to getting a lot of information.</p> <p>17 Thank you. With that, as Jason said, we made arrangements for</p> <p>18 people who have some travel congestion; so we are going to</p> <p>19 start with a representative from the auto manufacturers</p> <p>20 alliance to begin our process. Thanks.</p> <p>21 MR. WOEBKENBERG: Good morning. My name is Bill</p> <p>22 Woebkenberg, W-O-E-B-K-E-N-B-E-R-G. I'm a senior engineer for</p> <p>23 fuel regulatory affairs with Mercedea-Benz Research and</p> <p>24 Development North America. That's a fancy name for power train</p> <p>25 development engineer, vehicle development engineer, former</p>

85-Octane Rules Hearing

<p style="text-align: right;">10</p> <p>1 performance test driver, all sorts of things in terms of</p> <p>2 vehicles, and now I get to wear a suit and chat with you folks.</p> <p>3 I am here speaking as a member of the Alliance of</p> <p>4 Automobile Manufacturers. I would also like to introduce Val</p> <p>5 Ughetta and Renee Wadsworth of the Alliance staff. I am</p> <p>6 introducing this into the record, we will also have some</p> <p>7 talking points here; so I can answer questions afterwards, and</p> <p>8 I have introduced this to the record, but please by all means</p> <p>9 ask me some questions afterwards.</p> <p>10 The Alliance is the leading advocacy group for the</p> <p>11 auto industry, representing 77 percent of all car and light</p> <p>12 truck sales in the United States. Members include the BMW</p> <p>13 Group, Chrysler Group LLC, Ford Motor Company, General Motors</p> <p>14 Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA,</p> <p>15 Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America</p> <p>16 and Volvo Cars North America.</p> <p>17 Alliance members appreciate Governor Daugaard's</p> <p>18 efforts to address illegal and mislabeled sale of 85-octane</p> <p>19 gasoline in the state. We also support his outreach through</p> <p>20 notice and comment rule making and encourage an open and</p> <p>21 deliberative process on this topic of great importance, not</p> <p>22 only in South Dakota but nationwide.</p> <p>23 Automakers strongly oppose the sale of 85- and 86-</p> <p>24 octane gasoline in South Dakota or in any state because it is</p> <p>25 incompatible with both current and emerging engine technology.</p>	<p style="text-align: right;">12</p> <p>1 after-treatment systems are designed to run in a precisely</p> <p>2 engineered and optimized manner to meet challenging new</p> <p>3 environmental and vehicle performance specifications.</p> <p>4 One simply cannot achieve these end points and run on</p> <p>5 out-of-date, lower octane gasoline, particularly on a prolonged</p> <p>6 use basis. It is necessary to acknowledge that fuel is not</p> <p>7 merely a customer commodity but an integral part of the vehicle</p> <p>8 system as a whole. Engineering to protect against the</p> <p>9 potential use of a low-octane fuel in a vehicle developed for</p> <p>10 87 AKI or greater reduces the optimized functional capabilities</p> <p>11 of the vehicle. In short, customers already need and will</p> <p>12 continue to need access to predictable, nationally consistent</p> <p>13 supplies of minimum 87 AKI and higher rated octane fuels.</p> <p>14 Using the manufacturer-recommended level of octane</p> <p>15 contributes to engine efficiency and fuel economy as developed</p> <p>16 by the manufacturer and certified per US NHTSA and EPA. It</p> <p>17 also contributes to customers' confidence in the power to</p> <p>18 accelerate, pass, and handle loads on the vehicle. Finally,</p> <p>19 using manufacturer-recommended octane also contributes to the</p> <p>20 durability of the vehicle, including the vehicle exhaust</p> <p>21 catalyst, by avoiding thermal and other stresses on the</p> <p>22 equipment. Lower-octane rated fuel can degrade emission</p> <p>23 controls. These are factors that should be considered against</p> <p>24 the cost to refiners or suppliers or at the pump.</p> <p>25 The Alliance urges South Dakota not to promulgate any</p>
<p style="text-align: right;">11</p> <p>1 All vehicles sold today in the United States require the use of</p> <p>2 fuel with a minimum of 87 AKI, antiknock index, or sometimes</p> <p>3 called pump octane or higher, as reflected in owner's manuals.</p> <p>4 While we understand the factors that led to the consideration</p> <p>5 of a temporary emergency rule to assure interim fuel supply for</p> <p>6 consumers in the very western part of the state, the auto</p> <p>7 industry urges South Dakota not to legalize 85-octane gasoline.</p> <p>8 Allowing 85-octane gasoline in South Dakota is an</p> <p>9 unnecessary and unworkable step backwards in fuel policy. In</p> <p>10 fact, fueling with 85-octane gasoline poses risks to engine and</p> <p>11 emission control system durability from thermal stresses due to</p> <p>12 retarding of spark ignition events to avoid detonation, also</p> <p>13 known as knocking or pinging in your vehicles, damage that can</p> <p>14 occur if knocking cannot be completely eliminated, as well as</p> <p>15 overall cumulative damage with chronic use. Misuse in vehicles</p> <p>16 that require premium fuel can pose an even greater and more</p> <p>17 immediate risk of damage from 85-octane use. Many</p> <p>18 manufacturers' new vehicle limited warranties do not extend</p> <p>19 coverage to damage associated with improper fueling.</p> <p>20 Even more critical, 85-octane gasoline is wholly</p> <p>21 incompatible with advanced engine technologies that will appear</p> <p>22 in the marketplace in the very near future. These technologies</p> <p>23 are necessary to help meet new federal standards for better</p> <p>24 fuel economy and lower greenhouse gas emissions. These highly</p> <p>25 advanced fuel delivery, engine control, and exhaust</p>	<p style="text-align: right;">13</p> <p>1 permanent octane regulations to reduce the minimum allowable</p> <p>2 octane rated fuels for sale across the state. On June 26th,</p> <p>3 2012, ASTM International, a prominent international standards</p> <p>4 organization, announced it is undertaking a technical review of</p> <p>5 its automotive gasoline standard, D4814. The current version's</p> <p>6 nonbinding appendix information is explicit that the octane</p> <p>7 derating language, for high altitudes only, pertains to</p> <p>8 pre-1984 vehicles. It is appropriate for South Dakota to take</p> <p>9 into account the updated outcome from this ASTM process, as</p> <p>10 ASTM standards are frequently incorporated by reference into</p> <p>11 state and also federal law.</p> <p>12 As noted in the South Dakota Attorney General's recent</p> <p>13 opinion letter, current South Dakota law on octane is based on</p> <p>14 recommended standards from the National Conference of Weights</p> <p>15 and Measures, NCWM, National Institute of Standards and</p> <p>16 Technology, NIST, Handbook 130, as well as ASTM. NCWM has been</p> <p>17 meeting this week. It too will be reviewing its octane</p> <p>18 requirement recommendations. Access to such expert technical</p> <p>19 consideration will be valuable for South Dakota and the Rocky</p> <p>20 Mountain and contiguous states, as well as for the federal</p> <p>21 government.</p> <p>22 Finally, South Dakotans deserve a clear and detailed</p> <p>23 record specifying the economic arguments from refiners in</p> <p>24 support of legalizing the sale of 85-octane gasoline, since it</p> <p>25 is technically feasible for refiners to supply 87-octane</p>

85-Octane Rules Hearing

<p>14</p> <p>1 gasoline. Local refiners have been and remain capable of</p> <p>2 providing 87 and also higher premium octane grades of gasoline.</p> <p>3 It's very important in developing South Dakota's regulatory</p> <p>4 policy to clearly separate out technical feasibility from</p> <p>5 economic considerations.</p> <p>6 First, it is necessary to analyze what is technically</p> <p>7 feasible in making and distributing fuel products for the</p> <p>8 relevant refiners and suppliers supporting the sale of</p> <p>9 85-octane fuel, especially in an environment when a high-octane</p> <p>10 ethanol blending component is being used in 10 percent volume</p> <p>11 concentrations in the creation of the final gasoline blend.</p> <p>12 Second, there needs to be an evaluation of their specific</p> <p>13 concerns, of their specific economic factors or contract</p> <p>14 obligations claimed to directly constrain production or</p> <p>15 distribution of 87 versus 85-octane. Third, there should be</p> <p>16 separate acknowledgment and consideration of the complex,</p> <p>17 variable factors affecting fuel costs to consumers at the pump,</p> <p>18 which may be independent of refiner and supplier costs. One</p> <p>19 question is how would the economics change if all surrounding</p> <p>20 states had a minimum of 87-octane grade for regular fuel?</p> <p>21 In closing, for the same reasons that the auto</p> <p>22 industry has consistently argued for one national standard for</p> <p>23 tailpipe emissions, fuel economy and related greenhouse gas</p> <p>24 reductions, a patchwork of state specific fuels that are not</p> <p>25 compatible with the vehicle technologies consumers will come to</p>	<p>16</p> <p>1 guess not disrecommended for use are based on elevations,</p> <p>2 notably region 4 and 5, which are Rocky Mountain states so</p> <p>3 Wyoming, Colorado are in region -- the regions which allow</p> <p>4 85-octane. South Dakota is in the region that technically does</p> <p>5 not. And I understand those rules are based on real antiquated</p> <p>6 engines in regard to technology, particularly pre-1984 engines,</p> <p>7 which are mostly carbureted engines.</p> <p>8 MR. WOEBKENBERG: Yeah.</p> <p>9 MR. GLOTT: Does elevation still impact -- octane at</p> <p>10 elevations still impact engines in a negative way?</p> <p>11 MR. WOEBKENBERG: Depends on what type of power train</p> <p>12 technology you are talking about. I will give you an example.</p> <p>13 A standard laps rate for atmospheric pressure is about three</p> <p>14 percent for every thousand feet; so an old-fashioned engine</p> <p>15 1984 -- we are about 3500 feet here? So you lose about 10</p> <p>16 percent of your power. And then because the engine cannot</p> <p>17 automatically compensate, you lose even more power because it</p> <p>18 did not know to advance spark to take advantage of the fact</p> <p>19 there's lower cylinder pressures.</p> <p>20 Today you have naturally aspirated engines; so you</p> <p>21 have a V8 that doesn't have any turbocharge or super chargers.</p> <p>22 You also small turbocharge motors. So yes, still with some</p> <p>23 engines you will lose some performance, but the engine</p> <p>24 automatically compensates relative to spark events, through cam</p> <p>25 shot phasing, which means it tries to draw as much air in the</p>
<p>15</p> <p>1 rely upon is not sustainable. Other fuel parameters such as</p> <p>2 lead, manganese, sulfur and oxygenates have had to change with</p> <p>3 vehicle technology. Similarly, federal legislation requiring</p> <p>4 the use of certain volumes of alternative fuels, including</p> <p>5 ethanol, is accommodated in the marketplace, even by small</p> <p>6 refiners.</p> <p>7 In this regard, low-octane fuel suppliers need to</p> <p>8 transition and adjust their products for valid vehicle needs,</p> <p>9 as well as prepare for potential future increases in the</p> <p>10 minimum octane rating. Consumers deserve a nationally</p> <p>11 consistent minimum octane grade which is compatible with the</p> <p>12 recommendations of all auto manufacturers. In the absence of</p> <p>13 federal regulations to date, individual states also need to</p> <p>14 work toward that outcome.</p> <p>15 Fuels and vehicles are a system which require mutual</p> <p>16 compatibility. Our goal is to eliminate low-octane grades</p> <p>17 which are less than 87 AKI. Our goal is shared not only by</p> <p>18 Alliance members and members of Global Automakers but also</p> <p>19 large engine truck manufacturers, nonroad equipment</p> <p>20 manufacturers and other stakeholders as well. Thank you for</p> <p>21 holding this meeting and considering the auto industry's views.</p> <p>22 I have included contact information in the written testimony,</p> <p>23 and I would be happy to take your questions. Thank you.</p> <p>24 MR. GLOTT: Questions. The ASTM standards which</p> <p>25 established the regions where 85-octane is recommended or I</p>	<p>17</p> <p>1 engine as it can, it will do whatever it can within the</p> <p>2 calibrated parameters to permit the maximum power and maximum</p> <p>3 performance.</p> <p>4 On the other side there's a new crop, the future</p> <p>5 engines in fact are the smaller turbocharged motors which</p> <p>6 perform like the old, bigger engines. I'll give you an</p> <p>7 example. Chevy Trailblazer, you can get a V8 engine in that.</p> <p>8 Ford you can get a two-liter turbocharge ecoboost in the</p> <p>9 Explorer, very similar vehicles. They do the exact same thing,</p> <p>10 but they do it in very different ways. One limps along not</p> <p>11 very stressed, the other one is under boost. You operate at a</p> <p>12 higher specific load and a higher stress level. So there are</p> <p>13 still some degradation associated with octane needs on a very</p> <p>14 limited basis, but automatic compensation for that eradicates</p> <p>15 the majority of that reduced octane requirement.</p> <p>16 MR. GLOTT: So is it fair to say in regards to engine</p> <p>17 damage per se for common vehicles, that elevation really is no</p> <p>18 longer a factor versus octane, the actual octane level?</p> <p>19 MR. WOEBKENBERG: That's not correct. Many things</p> <p>20 play into when you develop an engine for octane sensitivity,</p> <p>21 many things take into play, even how the vehicle is used. You</p> <p>22 can have a vehicle that's a very highly stressed power train,</p> <p>23 but if it's driven very gently, you never get into the octane</p> <p>24 region that's required for maximum performance. But once</p> <p>25 again, say you have a pickup truck with a turbocharged motor,</p>

85-Octane Rules Hearing

<p style="text-align: right;">18</p> <p>1 you will be towing at an altitude, but you will be experiencing</p> <p>2 higher temperatures, higher turbocharger speeds, higher exhaust</p> <p>3 gas temperatures and that is only exacerbated by reduced</p> <p>4 octane, and as I mentioned in the readings, you will also</p> <p>5 reduce performance because the engine is trying to save itself.</p> <p>6 If you have to take it to its calibrated limits because of an</p> <p>7 octane that it really doesn't want to be at, then there tends</p> <p>8 to be a cumulative and cascading effect.</p> <p>9 MR. GLODT: Do you have any studies or reports that</p> <p>10 show damage caused to engines based on 85-octane or low octane?</p> <p>11 MR. WOEBKENBERG: There are published EPA studies that</p> <p>12 demonstrates what an increase in exhaust gas temperature does</p> <p>13 over a certain limit to emission performance and to cumulative</p> <p>14 damage on the catalyst systems. I don't have firsthand</p> <p>15 knowledge or firsthand information in hand for here is a</p> <p>16 smoking gun of an engine that has self-destructed. It doesn't</p> <p>17 mean it doesn't exist because most vehicles, as they get older,</p> <p>18 the octane sensitivity and octane requirement goes up. You</p> <p>19 have carbon buildup, you have a degradation in sealing; so oil</p> <p>20 migration past the rings reduces the octane of the combustion</p> <p>21 charge. So the engine has to be protected from its infancy to</p> <p>22 150,000 miles or greater. So a lot of customers don't</p> <p>23 necessarily service their vehicles at dealerships who record</p> <p>24 such things as you get higher and higher mileage. The proof in</p> <p>25 the pudding would be to actually run an emissions test because</p>	<p style="text-align: right;">20</p> <p>1 whole different crop of vehicles out there. And we are trying</p> <p>2 to raise awareness that a patchwork of boutique fuels, for</p> <p>3 example, will potentially produce boutique vehicles and that</p> <p>4 drives the cost up for everybody.</p> <p>5 MR. GLODT: One final question, then. Are you aware</p> <p>6 of any auto manufacturers voiding a warranty because of use of</p> <p>7 85-octane fuel?</p> <p>8 MR. WOEBKENBERG: Can I clarify voiding a warranty?</p> <p>9 Nobody's warranty is going to be completely voided by the use</p> <p>10 of improper fuel or improper engine oil or wrong windshield</p> <p>11 washer fluid or whatever. If there's damage that can be</p> <p>12 associated with a specific event using a fuel that's incorrect</p> <p>13 or an improper lubricant or whatever, that gets reviewed before</p> <p>14 it passes the dealership level. In my hand I don't have any</p> <p>15 specific examples, and once again, that's not the important,</p> <p>16 salient feature. It's just like saying I went to the doctor</p> <p>17 and he gave me medicine because I had infection, but I stopped</p> <p>18 taking it early and I feel really good. Great. You still went</p> <p>19 against the doctor's recommendations and you survived; next</p> <p>20 time you may not be so lucky. That's a mental model you can</p> <p>21 use. You can call me doctor if you like, too.</p> <p>22 MR. GLODT: We do appreciate your expertise.</p> <p>23 MS. HOWELL: I do have a question. In your statement,</p> <p>24 you said that it is feasible for the suppliers and</p> <p>25 manufacturers, the pipelines, whoever, to provide 87-octane to</p>
<p style="text-align: right;">19</p> <p>1 that -- each specific emissions test, and that could</p> <p>2 demonstrate the degradation in emissions performance of a</p> <p>3 compromised system.</p> <p>4 MR. GLODT: But we have no studies that show 85-octane</p> <p>5 is bad for an engine?</p> <p>6 MR. WOEBKENBERG: During the engineering development</p> <p>7 of a car, we run tests, we have to run tests at the limit. So</p> <p>8 I can't quote other manufacturers, but I know from my</p> <p>9 experience as a vehicle development engineer, that you run</p> <p>10 tests, you know that it is possible within the confines of what</p> <p>11 humans will do with their car, what conditions at which they</p> <p>12 will be operated, the ambient temperature conditions, that</p> <p>13 damage can occur if certain octane fuel is used. So you have</p> <p>14 to protect against that and there's only so far you can</p> <p>15 protect. You have a factor of safety, but the goal isn't to</p> <p>16 use the factor of safety up every time you hop in the car.</p> <p>17 So the fact is that right now there's not a whole</p> <p>18 legacy of broken vehicles means I'm pretty happy because it</p> <p>19 means we did our job. As engines progress towards the future,</p> <p>20 which actually that's the big talking point, is that that</p> <p>21 factor of safety or that window of operation now is starting to</p> <p>22 get narrower and narrower and narrower. I'm less concerned</p> <p>23 about looking backwards, but I'm looking forwards to the steps</p> <p>24 we have to take as auto manufacturers to achieve greenhouse gas</p> <p>25 compliance and fuel economy standards, and it's going to be a</p>	<p style="text-align: right;">21</p> <p>1 South Dakota. What proof, study, what prompts you to say that?</p> <p>2 MR. WOEBKENBERG: Go to the pumps, you sell -- in the</p> <p>3 state, as we came up, we noticed there is 87 and 89, looked</p> <p>4 like some 91 octane; so the fact that it exists. So that's why</p> <p>5 we actually have the requesting of the labels, to warn</p> <p>6 customers so they actually have an informed choice. That's the</p> <p>7 biggest thing, one of our talking points, South Dakotans have</p> <p>8 the right to make an informed choice, and the fact is if this</p> <p>9 were your only fuel, it would be a little different discussion.</p> <p>10 But now the fact is you can go to any pump and choose your</p> <p>11 octane with full knowledge, that is the whole gist of this</p> <p>12 conversation.</p> <p>13 MS. HOWELL: So do you totally oppose 85, considering</p> <p>14 the supply concerns that have been brought to us, with the</p> <p>15 warning labels?</p> <p>16 MR. WOEBKENBERG: Once again, it's a commercial issue</p> <p>17 that is trying to enforce a technical solution. My vehicles</p> <p>18 are developed sometime in the past. So now there's fuels here</p> <p>19 for future vehicles that are starting as a precedent and once</p> <p>20 the horse is out of the barn, the horse is out of the barn,</p> <p>21 right? I understand supply chain, but once again, it's</p> <p>22 somebody's commercial issue that's being thrust upon our</p> <p>23 shoulders and actually your shoulders, too, because you are the</p> <p>24 people that have to pay for the fuel and you don't want your</p> <p>25 vehicles damaged, you don't want them degraded. You don't want</p>

85-Octane Rules Hearing

<p>22</p> <p>1 anything bad to happen. You want to have the confidence and</p> <p>2 the power you bought. You know you bought a 400 horsepower</p> <p>3 pickup truck, you want to have a 400 horsepower pickup truck</p> <p>4 when you tow. You don't want something that's degraded because</p> <p>5 you saved some cents at the pump or you weren't aware of what</p> <p>6 you were putting into the tank.</p> <p>7 MS. HOWELL: The issue we are looking at, we do have</p> <p>8 87, 89 and premium gases for sale in South Dakota now, but</p> <p>9 especially in western South Dakota I believe a lot of 87 is 85,</p> <p>10 ethanol blended up to 87; so if we don't have that base 85 and</p> <p>11 we also don't have 85 as an option for consumers who are aware</p> <p>12 it's less than what their manufacturer might recommend, what</p> <p>13 will that do to our 87 or our 89 or premium supply, if that's</p> <p>14 all we allow?</p> <p>15 MR. WOEBKENBERG: Once again, hence the labels to make</p> <p>16 the customers aware. And the amount of ethanol -- excuse me,</p> <p>17 the amount of 85-octane is very small in comparison to the</p> <p>18 total amount of 87-octane that's produced throughout the United</p> <p>19 States. So just at the face value consideration, like we said</p> <p>20 in our statement, what would the world be like if there weren't</p> <p>21 any 85 and everybody sold the same fuel? I can't speak for the</p> <p>22 refiners, I can't speak for how they do such things, but in my</p> <p>23 view of it is that the vehicles are designed and developed for</p> <p>24 a certain fuel, that's what's required, and that's what the</p> <p>25 customer deserves.</p>	<p>24</p> <p>1 represent about 40 percent of sales across the US. We also</p> <p>2 represent other trade associations in the auto industry,</p> <p>3 including the Recreational Vehicle Industry Association and we</p> <p>4 also represent tier one suppliers to the auto industry.</p> <p>5 In looking at this octane issue, we have consulted our</p> <p>6 colleagues throughout the auto and engine manufacturing</p> <p>7 industry, including of course the Auto Alliance that you just</p> <p>8 heard from, the Engine and Truck Manufacturers Association that</p> <p>9 make both -- that make the engines for both on road and off</p> <p>10 road applications, farm, construction and so on, the Motorcycle</p> <p>11 Industry Council, which is I guess obvious, the Outdoor Power</p> <p>12 Equipment Institute, the National Marine Manufacturers</p> <p>13 Association, the Recreational Off Highway Vehicle Association,</p> <p>14 the Specialty Vehicle Institute of America, and the National</p> <p>15 Marine Manufacturers Association. Collectively all these</p> <p>16 groups represent all engines, vehicles produced for sale in the</p> <p>17 United States regardless of the application. Many of them have</p> <p>18 already submitted comments to the record or will be in the</p> <p>19 remaining time. We will also be submitting written comments</p> <p>20 prior to July 30 for the record.</p> <p>21 Automakers, as Bill explained, rely on the</p> <p>22 availability of gasoline meeting ASTM requirements to insure</p> <p>23 the proper long-term operation of vehicles and engines. It's</p> <p>24 to insure the consumers in the state and throughout the nation</p> <p>25 get the fuels appropriate for the vehicles to protect their</p>
<p>23</p> <p>1 MS. HOWELL: Thank you.</p> <p>2 MR. PFAHLER: I think I know the answer to this. I</p> <p>3 think you covered it earlier, but I want it stated simply, and</p> <p>4 that is do you, would you recommend 85, the use of 85-octane at</p> <p>5 any elevation?</p> <p>6 MR. WOEBKENBERG: No.</p> <p>7 MR. GLODT: Do you have any more further comments for</p> <p>8 us?</p> <p>9 MR. WOEBKENBERG: No.</p> <p>10 MR. GLODT: Thank you very much for your time and your</p> <p>11 expertise, and I'm sure we will be communicating more in the</p> <p>12 future.</p> <p>13 MR. WOEBKENBERG: Thanks for having us, appreciate it.</p> <p>14 MR. GLODT: Anyone else from the auto industry, auto</p> <p>15 manufacturers?</p> <p>16 MR. CABANISS: Good morning. My name is John</p> <p>17 Cabaniss, J-O-H-N C-A-B-A-N-I-S-S. I am the director for</p> <p>18 environment and energy for the Association of Global</p> <p>19 Automakers. We are sort of the rest of the automakers that the</p> <p>20 Auto Alliance doesn't cover. Actually, we have one overlapping</p> <p>21 member, which is Toyota, which is actually a pretty significant</p> <p>22 member. But we represent companies, Asian, 14 Asian and</p> <p>23 European companies that manufacture and sell cars here in the</p> <p>24 United States, companies that you are familiar with such as</p> <p>25 Toyota, Nissan, Honda, Hyundai, Kia, Subaru and so on. We</p>	<p>25</p> <p>1 significant investments that they make in vehicles and other</p> <p>2 gasoline-powered equipment. As Bill noted, every automaker</p> <p>3 recommends a minimum octane of 87 AKI for all vehicles,</p> <p>4 regardless of where they are driven in the US. And those</p> <p>5 recommendations are included in every owner's manual.</p> <p>6 Honda's recommendations and warnings is typical. It</p> <p>7 reads, fuel recommendation, unleaded gasoline, pump labeled</p> <p>8 87-octane or higher, use of lower-octane gasoline can cause a</p> <p>9 persistent heavy metallic engine knocking noise that leads to</p> <p>10 engine damage. And as Bill noted, for higher performance</p> <p>11 engines, Honda and other manufacturers most often do recommend</p> <p>12 higher octane levels.</p> <p>13 Because vehicles are complex products, as all of you</p> <p>14 understand very well since I'm sure most of you have vehicles,</p> <p>15 multiple vehicles, but because they are complex, the automakers</p> <p>16 have worked diligently for many, many, many years with</p> <p>17 suppliers and other stakeholders to develop broad-based</p> <p>18 standards for all aspects of vehicles. Just one example is the</p> <p>19 Society of Automotive Engineers, where we have over 700</p> <p>20 committees with over 10,000 volunteers from the auto</p> <p>21 manufacturing and supplier industry to set standards and review</p> <p>22 old standards governing designs of automotive systems, from</p> <p>23 steering to brakes to power trains and air conditioning.</p> <p>24 Similarly, we have standards for all automotive</p> <p>25 fluids, whether it's fuel, lube oil, greases, brake fluid, you</p>

85-Octane Rules Hearing

<p style="text-align: right;">26</p> <p>1 name it, we have standards for it, and those are developed 2 through cooperative, collaborative organizations. For fuels, 3 ASTM has been noted, it's very prominent. Gasoline quality 4 standards are critically important for automakers and consumers 5 to insure proper performance, drivability, durability, low 6 emissions and optimal fuel economy.</p> <p>7 The ASTM committee was established in 1904 to insure 8 the fuel quality standards so automakers can be confident and 9 consumers confident that the gasoline available is compatible 10 with the design of vehicles. There are specifications for a 11 range of things in the document D4814. It covers volatility, 12 octane ratings and distillation, corrosion, many factors. It's 13 not just octane or any one thing.</p> <p>14 The committee, this committee meets twice a year in 15 June and December. They have a membership of about 1500 16 professionals and experts and it has jurisdiction of over 580 17 standards themselves published in five volumes of the annual 18 book of ASTM standards. These are just not trivial things that 19 are done. These standards are developed through a data-driven, 20 collaborative consensus process with extensive deliberation, 21 rigorous testing, analyses and peer review. Much of the 22 research is done through a separate automotive industry 23 collaborative called the Coordinating Research Council.</p> <p>24 As others have noted, proper gasoline octane is 25 important to insure combustion of the fuel in the engine, and</p>	<p style="text-align: right;">28</p> <p>1 These problems occur well after engines are out of warranty and 2 result in higher maintenance costs for consumers or the extra 3 costs of premature replacement of engines or equipment.</p> <p>4 In light of the controversy here in South Dakota, at 5 its June meeting, the ASTM committee decided to take a new look 6 at octane specifications. A work group has been formed and is 7 beginning its review. As I've noted, we support continuing the 8 minimum at 87, but at a very minimum, the agency should wait 9 until the ASTM committee has a chance to review this and makes 10 its recommendations. They are the experts on the use of octane 11 and other issues with the gasoline.</p> <p>12 Even during the emergency period, as has already been 13 noted, it is absolutely necessary to have the strongest 14 possible pump labeling language prominently displayed on pumps 15 to caution consumers. Unfortunately, consumers often buy by 16 price and not what the owner's manual says. So it's sort of 17 like the old Fran Gilkerson story (sic), you can pay me now or 18 you can pay me later, and in this case, you might save a few 19 cents around the margin buying a product that's not good for 20 your car, but in the end if you continue to do that, you will 21 probably pay for it.</p> <p>22 In summary, South Dakota should maintain its current 23 regulations that rely on ASTM specifications. Today's vehicles 24 need 87-octane gasoline or higher. Starting with the 2012 25 model year, these new technologies that Bill explained are</p>
<p style="text-align: right;">27</p> <p>1 as Bill explained, with low-octane gasolines, you can get 2 detonation or preignition commonly called engine knock. 3 Sustained, that can cause engine damage. Modern engines are 4 built, they have computers on them, have for many years, and 5 the calibrations are adjusted, as Bill noted, automatically 6 based on a number of factors, including throttle position, how 7 much power you need for the work you are doing in terms of 8 towing versus cruising versus acceleration and so on.</p> <p>9 But they also have what are called knock sensors. 10 They sense when the engine is under a stress due to could be a 11 number of things, but for low-octane gasoline, if they sense 12 there's going to be detonation issues, the ignition timing of 13 the engine is retarded usually to reduce or prevent knock. The 14 retarded ignition timing results in higher vehicle emissions, 15 lower fuel economy, and reduced performance. And again, all of 16 that depends on how much demand you have at the time on the 17 engine, whether you are towing, accelerating, climbing a 18 mountain, whatever.</p> <p>19 The more serious ill effects of using substandard 20 gasoline, not unlike the same kinds of things you would see 21 with using substandard, say, lube oils, are long-term 22 cumulative and irreversible problems. Using substandard 23 gasoline results eventually in excessive wear and tear on 24 pistons, piston rings, cylinders, leading to loss of engine 25 power, excessive oil consumption, and reduced engine life.</p>	<p style="text-align: right;">29</p> <p>1 coming into the fleet because of the new EPA greenhouse gas 2 emissions standards and the DOT fuel economy standards. They 3 are going to ratchet up very quickly over the next few years. 4 They are looking at standards right now to ramp up fuel 5 economy, which as most of you know now is probably 28, 29 miles 6 per gallon average across the whole fleet to over 50 miles per 7 gallon by 2025. So these technologies are going to be 8 required, and gasoline is going to have to be available to meet 9 the needs.</p> <p>10 There's no reason, in our opinion, to believe that 11 maintaining the current regulations will have a negative effect 12 on fuel supplies in South Dakota. There is nothing to prevent 13 current suppliers from producing on spec fuels for South 14 Dakota. And there are multiple suppliers that can provide fuel 15 to South Dakota regardless of the circumstances. Past 16 experience with unplanned outages at refineries due to 17 imbalances or in some cases fires have not led to supply 18 disruptions nor have severe weather events such as hurricanes. 19 Even when they have been very broad, for instance, with 20 Hurricane Katrina in the Gulf states a few years ago, the 21 supply chain can adapt very quickly to provide gasoline where 22 it's needed. This has been the experience and we have been 23 informed of this by the American Petroleum Institute. So with 24 that, I guess I will close and thank you, and I would be glad 25 to answer any questions you may have.</p>

85-Octane Rules Hearing

<p style="text-align: right;">30</p> <p>1 MR. GLODT: Thank you, I'll ask a couple of the same</p> <p>2 questions I asked earlier. Do you have any studies or reports</p> <p>3 that show 85-octane damages engines?</p> <p>4 MR. CABANISS: No, as Bill explained, these kinds of</p> <p>5 issues are looked at in engine development and so on. There's</p> <p>6 none that I know of we could point to specifically to show that</p> <p>7 85 versus, say, 87 versus some other octane level would create</p> <p>8 a particular problem for a particular engine.</p> <p>9 MR. GLODT: Also, have any of your auto manufacturers</p> <p>10 voided a warranty due to 85-octane fuel use?</p> <p>11 MR. CABANISS: No, again, I would agree with Bill's</p> <p>12 assessment there, it doesn't void the -- use of a fuel that's</p> <p>13 improper doesn't void a warranty per se, but it could -- an</p> <p>14 individual event, if it was shown to be because of per se</p> <p>15 prolonged use of an improper fuel or a lubricant, it could, the</p> <p>16 manufacturer could choose not to honor a warranty claim. I</p> <p>17 don't know of any that have ever done that.</p> <p>18 MR. GLODT: I'll combine my question with Dave's</p> <p>19 question in regards to elevation, is it your -- in your</p> <p>20 opinion, is 85-octane safe for use at any elevation?</p> <p>21 MR. CABANISS: No. None of the manufacturers that we</p> <p>22 represent or that I know of, which is everyone who sells cars</p> <p>23 in the US, recommends use of anything less than 87, and again,</p> <p>24 as noted in the D4814 ASTM document, it clearly explains that</p> <p>25 85 AKI was acceptable at high altitude for pre '84 engines.</p>	<p style="text-align: right;">32</p> <p>1 MS. HOWELL: A question I probably should have also</p> <p>2 asked the previous speaker. You referenced greenhouse</p> <p>3 standards and emissions as one of the reasons why higher</p> <p>4 octanes are necessary in following with the regulations that</p> <p>5 are coming out from the federal government in order to comply</p> <p>6 with those. But again, in a previous public meeting we were</p> <p>7 told that the Rocky Mountain Pipeline is being retrofitted to</p> <p>8 actually supply an 82 or 83 octane that will be blended with</p> <p>9 ethanol to make 85 so that they can meet their renewable fuels</p> <p>10 federal standards. Are those two standards compatible in any</p> <p>11 way or are they in contradiction to each other?</p> <p>12 MR. CABANISS: I would have to say they are in</p> <p>13 contradiction. Again, for the same reasons that Bill</p> <p>14 explained, in essentially doubling fuel economy in vehicles in</p> <p>15 the fleet over the next say 15 years, it's going to be</p> <p>16 essential to have smaller, perhaps turbocharged engines to get</p> <p>17 the peak power that's needed. Of course there will be other</p> <p>18 technology engines undoubtedly that don't use gasoline such as</p> <p>19 potentially hydrogen-powered either internal combustion engines</p> <p>20 or fuel cell vehicles, electric vehicles we are already seeing.</p> <p>21 Of course it doesn't matter what gasoline is to them because</p> <p>22 they don't use it. But it's essential for the gasoline-powered</p> <p>23 fleet of the future that octane is going to be even more</p> <p>24 important, more engines will be sensitive, again, because of</p> <p>25 the power curve that they are facing with smaller engines</p>
<p style="text-align: right;">31</p> <p>1 It's just simply not needed any more, it's sort of an artifact</p> <p>2 of the old days when we had carbureted engines, precontrol</p> <p>3 cars, precomputer controlled cars.</p> <p>4 MS. HOWELL: I'd also like to repeat one of my</p> <p>5 previous questions. You said that even if we outlaw 85, we</p> <p>6 will have gasoline, and we have been previously told in this</p> <p>7 process and I imagine we will be told later today that certain</p> <p>8 suppliers won't find South Dakota a worthwhile market if they</p> <p>9 have to do a higher octane for us. Do you know who's going to</p> <p>10 supply us with 87 if we don't allow 85?</p> <p>11 MR. CABANISS: No, I'm simply basing my points on what</p> <p>12 I was told by, as I said, I talked to colleagues at the</p> <p>13 American Petroleum Institute, which is that wherever there are</p> <p>14 markets for gasoline, there will be supplies, and even in</p> <p>15 emergencies, such as with hurricanes or unplanned outages at</p> <p>16 refineries, that the supply chain quickly adjusts to get the</p> <p>17 gasoline to where it's needed. And again, multiple products</p> <p>18 are already made. You know, there are premium grade gasolines,</p> <p>19 you know, for many, many years before ethanol was used to any</p> <p>20 great degree in gasoline, the refiners produced 85-octane AKI</p> <p>21 straight gasoline and if you put 85 -- if you have 85-based</p> <p>22 fuel and put in 10 percent ethanol, you have no problem with</p> <p>23 87-octane. So there is simply no technical reason that</p> <p>24 whatever product is needed here in South Dakota can't be</p> <p>25 provided, at least none that we are aware of.</p>	<p style="text-align: right;">33</p> <p>1 having to operate at higher RPMs, higher turbo boost in many of</p> <p>2 them and so on.</p> <p>3 MS. HOWELL: And then just my last question. Do you</p> <p>4 think that we should wait until ASTM has a chance to review its</p> <p>5 current standards in 4814? Do you have a time line for when</p> <p>6 they are going to have a new recommendation?</p> <p>7 MR. CABANISS: No, I actually asked some people on</p> <p>8 the ASTM committee that question and they couldn't answer it,</p> <p>9 because I know that's important. But what I was told was that</p> <p>10 given the significance of what's happening here in South</p> <p>11 Dakota, the committee will move to expedite their process as</p> <p>12 quickly as they can, but really that question needs to be</p> <p>13 directed to the ASTM committee.</p> <p>14 MS. HOWELL: Thank you.</p> <p>15 MR. GLODT: Are there any other commenters who have</p> <p>16 travel restrictions and want to volunteer to go now?</p> <p>17 MS. MAINLAND: Good morning. My name is Monica</p> <p>18 Mainland, M-O-N-I-C-A M-A-I-N-L-A-N-D. I'm the manager of the</p> <p>19 ExxonMobil Billings refinery. I'm also accompanied by our</p> <p>20 refinery economist, Mark Holms, who in addition to being my</p> <p>21 graphics assistant today or Vanna White, is here with me in</p> <p>22 case we get some real difficult questions from the crowd.</p> <p>23 As the refinery manager, what I would like to address</p> <p>24 today is the supply challenges that could occur in the western</p> <p>25 area of South Dakota if the state were to choose to revise</p>

85-Octane Rules Hearing

<p style="text-align: right;">34</p> <p>1 their current proposed rules to require a minimum octane level</p> <p>2 of 87. All of us here today recognize the importance of cost</p> <p>3 effective supply of gasoline, particularly during difficult</p> <p>4 economic times. And we owe it to our customers and your</p> <p>5 constituents to address the topic of energy policy in an open,</p> <p>6 honest, and factual way.</p> <p>7 First, allow me to give a quick background on our</p> <p>8 refinery in Billings, Montana. It's located just east of the</p> <p>9 city of Billings. The refinery has been operating continuously</p> <p>10 since 1949 and since that time we have almost tripled our</p> <p>11 capacity. We are proud to be a safe and responsible employer</p> <p>12 and neighbor in our community and to provide a reliable supply</p> <p>13 of quality fuels products throughout the Rocky Mountain region,</p> <p>14 including South Dakota.</p> <p>15 The refinery takes in about 60,000 barrels a day of</p> <p>16 crude oil and processes it into various marketable products for</p> <p>17 consumer and industrial use. The refinery produces about 400</p> <p>18 million gallons of gasoline each year, which compared to others</p> <p>19 in the United States, would be considered a small refinery.</p> <p>20 As you can see from this chart, the refinery uses an</p> <p>21 extensive series of pipelines to distribute its product</p> <p>22 throughout the Rocky Mountain region to states, including</p> <p>23 Montana, Wyoming, Utah, Colorado, Washington, Idaho, and South</p> <p>24 Dakota. In the majority of states in the Rocky Mountain</p> <p>25 region, the predominant regular gasoline grade that is sold has</p>	<p style="text-align: right;">36</p> <p>1 boost that ethanol gives to the finished gasoline octane.</p> <p>2 So really to help you understand how ethanol blending</p> <p>3 does impact product supply, let me talk about the logistics and</p> <p>4 blending of E10 and how it works. In the past finished octane</p> <p>5 was manufactured at the refineries and shipped to the terminals</p> <p>6 for sales to customers. Today gasoline blend stocks are</p> <p>7 manufactured at the refineries, shipped to terminals, and then</p> <p>8 blended with the 10 percent ethanol to make the E10 gasoline,</p> <p>9 which is then loaded onto trucks for deliveries to service</p> <p>10 stations or other customers. The addition of the ethanol at</p> <p>11 the terminal increases the octane level of the gasoline above</p> <p>12 the level of the gasoline that is actually blended at the</p> <p>13 refinery, and the finished E10 gasoline blend that is sold to</p> <p>14 the consumer from the terminal meets the performance standards</p> <p>15 set out by ASTM.</p> <p>16 So today to sell an 85 gasoline at the product</p> <p>17 terminal, refineries are able to manufacture 81-and-a-half</p> <p>18 gasoline blend stock, ship it to the pipelines, blend it with</p> <p>19 the ethanol and sell 85-octane gasoline. In the past to supply</p> <p>20 that same barrel of 85-octane gasoline, refineries would have</p> <p>21 had to manufacture 85 and ship it to the pipeline, through the</p> <p>22 pipeline to the terminals. So that's a major difference that</p> <p>23 we have seen over the last few years, and it really came as</p> <p>24 this requirement -- as a result of the requirement to blend</p> <p>25 ethanol and meet the Renewable Fuels Standard.</p>
<p style="text-align: right;">35</p> <p>1 an octane below 87. Wyoming, Colorado, Utah and Idaho all have</p> <p>2 regular 85-octane product available. Montana's regular</p> <p>3 gasoline has an 85 and a half octane. So you can see from the</p> <p>4 map, the green states really are selling a sub octane or sub</p> <p>5 87-octane as regular.</p> <p>6 It is allowed at the 85-octane level in the states</p> <p>7 because national standards organizations like ASTM do allow for</p> <p>8 it in their current standards at the higher elevation levels.</p> <p>9 Well, the industry does offer an 87-octane product in these</p> <p>10 states for those consumers that do choose to use it. It is</p> <p>11 marketed as a mid grade gasoline. The fact is 85 or 85 and a</p> <p>12 half gasoline has been available for many years in western</p> <p>13 South Dakota and Montana as well as the rest of the Rocky</p> <p>14 Mountain states and is the largest selling grade in those</p> <p>15 areas. We are not aware of any consumer complaints or vehicle</p> <p>16 performance issues associated with that product.</p> <p>17 Recently the Rocky Mountain region has seen changes in</p> <p>18 product supply due to environmental and federal regulations.</p> <p>19 The Rocky Mountain states have actually been one of the last</p> <p>20 areas in the United States to transition to a blend of 10</p> <p>21 percent ethanol or E10 gasoline. This move to E10 was</p> <p>22 necessary for refiners to comply with the federal biofuels</p> <p>23 mandates that were contained in the Renewable Fuels Standard.</p> <p>24 This transition to E10 gasoline has driven changes to product</p> <p>25 supply logistics because of how ethanol must be blended and the</p>	<p style="text-align: right;">37</p> <p>1 So because of this change, we are now seeing pipelines</p> <p>2 in the region lower the base shipping octane from 85 to</p> <p>3 81-and-a-half; so with that context on the changes in product</p> <p>4 supply in the region, I'd now like to discuss what the</p> <p>5 implications of that are for South Dakota. So as you can see</p> <p>6 from this illustration, there are pipelines that connect our</p> <p>7 refinery in Billings to the terminal in Rapid. Okay, Rapid</p> <p>8 City is supplied from Billings Refinery via the Seminole</p> <p>9 Pipeline to Casper and then the Rocky Mountain Pipeline from</p> <p>10 Casper to Rapid City.</p> <p>11 As you can appreciate, you can see there's a fairly</p> <p>12 comprehensive network of pipelines through the region. It</p> <p>13 allows us to transport large volumes of petroleum products over</p> <p>14 long distances out in the western US, and just to give you an</p> <p>15 example, a gallon of gasoline travels about 500 miles between</p> <p>16 Billings and the terminal in Rapid City; so it's a fairly</p> <p>17 efficient system.</p> <p>18 What may not be as obvious is that the logistics of</p> <p>19 the pipeline system also forces standardization of grade and</p> <p>20 qualities of gasoline that can be shipped. So as an example,</p> <p>21 at Casper, gasoline that is shipped on Seminole Pipeline is</p> <p>22 delivered into what's called breakout tankage at the Casper</p> <p>23 terminal. It's then shipped on by Pioneer Pipeline to Salt</p> <p>24 Lake City or Rocky Mountain Pipeline to Rapid City, Cheyenne or</p> <p>25 Denver. Because there's only a limited amount of tankage at</p>

85-Octane Rules Hearing

<p style="text-align: right;">38</p> <p>1 Casper, there's a very limited capability to segregate specific</p> <p>2 grades of gasoline, and what we see is there's an ability to</p> <p>3 segregate about two or three different octane grades and also</p> <p>4 account for the seasonal changes in vapor pressure that are</p> <p>5 required in the various regions.</p> <p>6 So what grades are actually chosen as those standard</p> <p>7 grades for regular and premium gasoline really are going to be</p> <p>8 a function of the pipelines and the downstream markets in the</p> <p>9 region. So this means that Rapid City is at one end of a very</p> <p>10 complex supply chain that is influenced by larger markets in</p> <p>11 Wyoming, Colorado, and Utah. So in the past on these pipeline</p> <p>12 systems in the region, an 85-octane was generally maintained</p> <p>13 for the regular unleaded gasoline supply. What we are seeing</p> <p>14 now is that pipeline trends in the region would suggest that</p> <p>15 85-octane segregation is likely to be replaced by</p> <p>16 81-and-a-half. So what we have seen is Pioneer Pipeline and</p> <p>17 Chevron Pipeline have already transitioned to 81-and-a-half</p> <p>18 octane.</p> <p>19 Rocky Mountain Pipeline from Casper to Rapid City is</p> <p>20 planning to introduce an 81-and-a-half-octane, but they do</p> <p>21 still plan to maintain an 85-octane segregation; so that sounds</p> <p>22 good, but the upshot is we believe that Seminole Pipeline, which</p> <p>23 runs from Billings to Casper, may in the future eliminate that</p> <p>24 85-octane segregation. So if they were to eliminate that</p> <p>25 segregation, we would only be able to supply an</p>	<p style="text-align: right;">40</p> <p>1 breakout tankage, and the terminal to accommodate that</p> <p>2 increased volume. And to give you a real example of how</p> <p>3 strained the system is today, we know that when the Sturgis</p> <p>4 motorcycle rally comes to the area in early August, we see</p> <p>5 premium demands increase on the order of about two and a half</p> <p>6 times above the normal level. What this change would drive is</p> <p>7 a sustained tripling of the demand, and we know to accommodate</p> <p>8 the demand associated with Sturgis, we struggle. We have to</p> <p>9 deliver in volumes in advance; we have to maximize deliveries</p> <p>10 during that period just to hit two and a half times. This</p> <p>11 would be day in, day out tripling of the premium demand; so we</p> <p>12 have a concern about our ability to do that.</p> <p>13 So in summary, today pipeline systems and conductivity</p> <p>14 in the Rocky Mountain region is not configured to deliver a</p> <p>15 finished 87 motor octane gasoline. The majority of the states</p> <p>16 supplied by the Billings Refinery allow for 85-octane gasoline</p> <p>17 and it is the largest selling grade in the region. As we see,</p> <p>18 Rapid City is at one end of a very complex supply chain of</p> <p>19 pipelines connected to markets throughout the Rocky Mountain</p> <p>20 region, and these complex pipeline system logistics drive</p> <p>21 standardization of the grades and the qualities of the products</p> <p>22 that can be shipped, and the standard grades that are chosen</p> <p>23 tend to be largely driven by the larger markets throughout the</p> <p>24 region.</p> <p>25 As the pipeline systems address changes related to</p>
<p style="text-align: right;">39</p> <p>1 81-and-a-half-octane gasoline to Casper and then over to Rapid</p> <p>2 City. By blending that 81-and-a-half-octane at the Rapid City</p> <p>3 terminal with the 10 percent ethanol, we would still be able to</p> <p>4 deliver the 85-octane gasoline to Rapid City.</p> <p>5 Now, if South Dakota were to require a minimum</p> <p>6 87-octane at Rapid City, supply of this higher octane gasoline</p> <p>7 would either drive a move through the rest of the Rocky</p> <p>8 Mountain region to a higher octane level or more likely require</p> <p>9 delivery of higher volumes of premium gasoline into Rapid City.</p> <p>10 This higher octane premium gasoline would then be blended at</p> <p>11 the terminals with the 81-and-a-half-octane gasoline and the</p> <p>12 ethanol to make the 87. So this increased octane would not</p> <p>13 come without a cost. We all know when we go to the gas station</p> <p>14 there's a difference at the pump between regular and premium</p> <p>15 unleaded. The same is true if you look at the rack pricing</p> <p>16 history at Rapid City, there is a difference between premium</p> <p>17 gasoline and regular gasoline. If we look at the history of</p> <p>18 the pricing there, it would suggest that the additional premium</p> <p>19 that we would need to blend to hit that 87 spec on the gasoline</p> <p>20 would add on the order of five to 10 cents a gallon to what the</p> <p>21 customer sees. So that's the cost part of the story.</p> <p>22 There's also a big feasibility question. The ability</p> <p>23 just to deliver a sufficient quantity of premium into Rapid to</p> <p>24 blend the 87-octane is also a concern for us. There would have</p> <p>25 to be adequate capacity through the pipeline systems, the</p>	<p style="text-align: right;">41</p> <p>1 ethanol blending and align with their consumer requirements, we</p> <p>2 expect to see the base octane shipping requirements reduced</p> <p>3 from today's 85-octane down to an 81-and-a-half standard across</p> <p>4 the system. This will make the ability to supply 87-octane</p> <p>5 motor gasoline to Rapid City very difficult and is likely to</p> <p>6 introduce additional costs to the end consumer. A requirement</p> <p>7 to supply 87-octane to western South Dakota will place stresses</p> <p>8 on pipelines and terminals that could create major supply</p> <p>9 issues for the Rapid City market.</p> <p>10 So in conclusion, I hope that this discussion has been</p> <p>11 helpful for you to understand the complex supply logistics</p> <p>12 associated with product supply and also the implications of the</p> <p>13 octane level for regular gasoline in western South Dakota.</p> <p>14 Continuation of the 85-octane in the western area of South</p> <p>15 Dakota will enable us to meet the goals of providing affordable</p> <p>16 energy supplies and powering the state's economy. Governor</p> <p>17 Dugaard said it best, we want to protect South Dakota</p> <p>18 consumers, avoid fuel shortages, and keep gas prices down.</p> <p>19 ExxonMobil Billings Refinery shares those goals and we look</p> <p>20 forward to working with you to achieve them. Thanks for the</p> <p>21 opportunity to speak with you this morning and I welcome any</p> <p>22 questions you may have.</p> <p>23 MR. GLODT: Thank you very much, Monica. Who makes</p> <p>24 the decision in regard to what octane product is transported in</p> <p>25 that pipeline, then, that serves Rapid City?</p>

85-Octane Rules Hearing

<p style="text-align: right;">42</p> <p>1 MS. MAINLAND: So they are third-party pipelines and</p> <p>2 they do take input from the various shippers and businesses</p> <p>3 associated with the pipeline itself, but ultimately it is the</p> <p>4 pipeline that does make that decision.</p> <p>5 MR. GLODT: Do you foresee a situation where they will</p> <p>6 continue to provide an 81-and-a-half or 82-octane and 85 or is</p> <p>7 it your opinion that they are going to go to an exclusive 81.5</p> <p>8 product?</p> <p>9 MS. MAINLAND: So what I would say is just given the</p> <p>10 large volumes of gasoline that need to move through the region,</p> <p>11 the more you can standardize on common grades, it actually</p> <p>12 increases the capability of your system to move them. The more</p> <p>13 you subdivide and start creating boutique grades of fuels, it</p> <p>14 limits the capability of the pipeline system and thus really</p> <p>15 would impact the business of the pipeline business itself.</p> <p>16 MR. GLODT: One of the questions we frequently get is</p> <p>17 okay, 85 is being transported through that pipeline now, just</p> <p>18 blend ethanol, 10 percent ethanol and it gets you to 87. Why</p> <p>19 can't that continue to be done?</p> <p>20 MS. MAINLAND: What we are seeing already is that we</p> <p>21 have seen a couple of the pipelines, Chevron and Pioneer have</p> <p>22 already moved to that 81-and-a-half. There's a general</p> <p>23 pressure we believe that we can supply at a lower cost to the</p> <p>24 market by supplying a conforming gasoline but adding octane</p> <p>25 level that it actually requires.</p>	<p style="text-align: right;">44</p> <p>1 MS. MAINLAND: I would be probably guessing at this</p> <p>2 point.</p> <p>3 MR. GLODT: Is it fair to say less than 10 percent?</p> <p>4 MS. MAINLAND: Probably fair.</p> <p>5 MR. GLODT: Less than five percent?</p> <p>6 MS. MAINLAND: Hard to say. But as you can see, it's</p> <p>7 a fairly broad geographic region that we do service out of the</p> <p>8 refinery; so there is a balance between all of the end</p> <p>9 destinations.</p> <p>10 MR. GLODT: What's Exxon's plan as we move forward?</p> <p>11 Will you continue to produce 85-octane product or will you</p> <p>12 segregate like the Wyoming refinery produces both 81-and-a-half</p> <p>13 and 85 and a premium or what?</p> <p>14 MS. MAINLAND: What I'd focus on is really the</p> <p>15 transportation systems and what the pipelines are able to</p> <p>16 deliver, and we manufacture the grade of gasoline that are</p> <p>17 being carried as those standard grades by the pipeline. So</p> <p>18 producing 85 is kind of a moot point if you can't put it in the</p> <p>19 pipeline and deliver it.</p> <p>20 MR. GLODT: I suppose it's fair to say that South</p> <p>21 Dakota's ability to impact that market is very minimal compared</p> <p>22 to what Colorado and Wyoming and the other Rocky Mountain</p> <p>23 states where 85 is currently legal, their ability to impact</p> <p>24 that market is obviously much more significant than what our</p> <p>25 ability is.</p>
<p style="text-align: right;">43</p> <p>1 MR. GLODT: When you say -- you said that 85-octane is</p> <p>2 the largest market share of fuel sold in the Rocky Mountain</p> <p>3 states and I also believe -- correct me if I'm wrong, I'm</p> <p>4 saying that also is true for at least the Black Hills region of</p> <p>5 South Dakota. Do you know the percentage in comparison to the</p> <p>6 other octanes, what percent, for example, is 85-octane versus</p> <p>7 87, 89 or 91?</p> <p>8 MS. MAINLAND: I may have to call on my friend here,</p> <p>9 but I'm guessing it's probably in excess of 80 percent.</p> <p>10 MR. HOLM: It's around 80.</p> <p>11 MR. GLODT: 80 percent of the gasoline sold in the</p> <p>12 Black Hills region of South Dakota is 85-octane?</p> <p>13 MS. MAINLAND: Yeah, so if you think about being at a</p> <p>14 service station and watching the grade of gasoline that</p> <p>15 individuals pick when they pull up to the pump, it is typically</p> <p>16 a regular octane gasoline as opposed to some of the more</p> <p>17 premium grades.</p> <p>18 MR. GLODT: I know you said around 400 million gallons</p> <p>19 produced annually by the Exxon Billings Refinery. Do you know</p> <p>20 what percentage of the network that comprises, the network of</p> <p>21 refineries that feed that pipeline system?</p> <p>22 MS. MAINLAND: I can't give you an estimate of that.</p> <p>23 MR. GLODT: Do you know what percentage of your</p> <p>24 product ends up in South Dakota that's refined at the Billings</p> <p>25 Exxon Refinery?</p>	<p style="text-align: right;">45</p> <p>1 MS. MAINLAND: Yes, as I said in my testimony, really</p> <p>2 South Dakota is kind of on the one end of a complex supply</p> <p>3 chain that supplies a very large region, which is predominantly</p> <p>4 running at that 85-octane level.</p> <p>5 MR. GLODT: The Rapid City terminal is frequently low</p> <p>6 on fuel, especially during the summer months when the driving</p> <p>7 season demand is obviously higher, and I know a lot of</p> <p>8 suppliers have to go directly to Billings to find product to</p> <p>9 even provide fuel to Rapid, which significantly increases the</p> <p>10 cost of fuel because they can't get it at the pipeline. That</p> <p>11 terminal is, at least in the summer months, it seems as though</p> <p>12 it's constantly low and they are always allocating or rationing</p> <p>13 fuel to suppliers. Is there anything we can do as a state to</p> <p>14 improve that supply situation?</p> <p>15 MS. MAINLAND: So again I'll go back to this idea that</p> <p>16 the more you standardize the grade on the pipelines and you are</p> <p>17 able to move large volumes of the same grade, that overall net</p> <p>18 will increase the capability of the pipeline system.</p> <p>19 MR. PFAHLER: Monica, you have said several times that</p> <p>20 the more you standardize, the more fuel you can move. So given</p> <p>21 what we heard earlier with regard to current efforts by ASTM</p> <p>22 and National Conference of Weights and Measures to set a</p> <p>23 minimum of 87-octane, would you support that?</p> <p>24 MS. MAINLAND: So I would say is there have been a lot</p> <p>25 of changes in engine and emissions technologies and fuel</p>

85-Octane Rules Hearing

46

1 makeup. I think it's appropriate that ASTM takes a look at
 2 what the right level of octane is for the gasoline and that a
 3 decision be made based on facts coming out of their study.
 4 MR. PFAHLER: My follow-up to that is given what we
 5 have already heard from some of the engine manufacturers, how
 6 do the Rocky Mountain refiners justify manufacturing a fuel
 7 which is not recommended for virtually any engine manufactured
 8 in the last 20 years?
 9 MS. MAINLAND: I think what I would point to is the
 10 existing ASTM standard would suggest that an 85-octane would
 11 perform similarly in the Rocky Mountains and the higher
 12 elevation as an 87-octane would at sea level; so we are going
 13 towards ASTM, we are also looking at the history over the last
 14 number of years where there's been no history of consumer
 15 complaints or vehicle performance issues despite the fact that
 16 it is the predominant grade in the region.
 17 MR. GLODT: We are pleased to see that ASTM is taking
 18 this issue on and it's my understanding they will also be
 19 studying the specific impact of 85-octane fuel on engines,
 20 which apparently we do not have such studies or reports now,
 21 but it does sound like quite the stage is being set for an epic
 22 battle between auto manufacturers and petroleum industry
 23 regarding a national standard. Are you --
 24 MS. MAINLAND: I think what I would comment is engines
 25 and emission technologies, environmental rules are always

47

1 evolving, and we have seen a lot of changes in the fuel quality
 2 that we produce over the last number of years in response to
 3 that. So we have seen reduction in benzene levels, we have
 4 seen reduction in sulfur levels, further back elimination of
 5 lead from fuels; so I think it really is a collaborative
 6 effort, but the fuel changes really do need to be tied with the
 7 technology changes, and ASTM is a great way to really go
 8 through and do that analysis and standardize.
 9 MR. GLODT: I think a national standard would make at
 10 least our lives much easier. I wish I could be more optimistic
 11 that such standard could be accomplished, but I will remain
 12 hopeful. Couple other questions. Will a ban of 85-octane, if
 13 that occurs in South Dakota, will Exxon continue to provide
 14 fuel for South Dakota?
 15 MS. MAINLAND: So I think it would be premature to
 16 speculate on a forward plan; so I can't comment on that. I did
 17 comment that it is possible to blend up a higher octane grade
 18 like an 87; it's certainly more difficult, it could result in
 19 supply shortages, and we would expect to see an end result to
 20 the consumer of an increase to five to 10 cents a gallon to do
 21 that.
 22 MR. GLODT: In regard to where, if anywhere in South
 23 Dakota 85-octane should be sold, what are your thoughts on how
 24 broadly it should be made available?
 25 MS. MAINLAND: I think simply if you point back to the

48

1 ASTM standard, I think it's the 102nd longitude is the dividing
 2 line for area three.
 3 MR. GLODT: I know current labeling is an issue for
 4 Exxon and I believe all or most, if not all, Exxon stations,
 5 gas stations in western South Dakota right now is discontinued
 6 selling 85-octane, I assume to avoid having to post the
 7 cautionary consumer labeling. If that label or a variation of
 8 that label is continued to be required, will that impact
 9 Exxon's decision to supply fuel to South Dakota?
 10 MS. MAINLAND: Again, I won't comment on the forward
 11 looking plans for supply. I'm not an expert on labeling, but
 12 what I would say is I would encourage you to take a look at the
 13 labeling and make sure that it's consistent with what ASTM
 14 would recommend, and if you believe that the fuel does conform,
 15 think about the wording and whether it's overly strong relative
 16 to the potential impacts.
 17 MR. GLODT: My final question, it begs the question,
 18 those Exxon stations have found a way now to avoid selling
 19 85-octane. Why can't that continue? You are doing it now; so
 20 why do we need to allow 85-octane in South Dakota?
 21 MS. MAINLAND: So I'll step back. Today's situation
 22 is there is still 85-octane gasoline shipped on Seminoe;
 23 however, to ship that across to Rapid and then with the
 24 addition of ethanol, blend that up to an 87-octane gasoline, in
 25 the future if we are no longer able to ship the 85-octane on

49

1 Seminoe, it reduces us to 81-and-a-half, which requires we
 2 blend additional premium as well as the ethanol to meet the 87.
 3 MR. GLODT: That puts us in a difficult position
 4 because not knowing what's going to be transported on that
 5 pipeline, if it's anything less than 85, it really puts us in a
 6 difficult position, but even if the volume of 85 is reduced any
 7 significant amount, it puts us in a difficult position because
 8 again right now we are always low, fuel is being rationed,
 9 trucks are driving to Billings, a long way to get fuel for
 10 western South Dakota the way it is. I can see where any
 11 reduction of any volume of 85 in South Dakota is going to
 12 create supply issues, at least increase fuel prices.
 13 MS. MAINLAND: That's certainly a challenge.
 14 Reliability of fuel supply to a region is important for the
 15 economy and for the consumers. I think also the cost-related
 16 considerations is important as you consider this issue.
 17 MS. HOWELL: I did have just one kind of technical
 18 question, I can probably ask Dave this afterwards, but I'm
 19 going to ask you. You say you are shipping 85 now and with the
 20 10 percent ethanol blend, you can get it up to 87; so that's a
 21 two-point octane increase, which is my understanding you can
 22 blend 87 with 10 percent and get to 89. I'm curious how you
 23 can get 81-and-a-half-octane all the way up to 85 with still
 24 only 10 percent.
 25 MS. MAINLAND: I asked my expert exactly that question

85-Octane Rules Hearing

<p>50</p> <p>1 last night and it actually is somewhere in the order of a two</p> <p>2 number increase; so where we are blending the 10 percent</p> <p>3 ethanol on the 85, we are actually getting something above the</p> <p>4 87.</p> <p>5 MS. HOWELL: We are getting all the way a three and a</p> <p>6 half point increase?</p> <p>7 MS. MAINLAND: So as our fuels folks have looked at</p> <p>8 blending the 10 percent ethanol on the 81-and-a-half, they are</p> <p>9 confident we would be able to achieve that specification of the</p> <p>10 85.</p> <p>11 MS. HOWELL: Thank you.</p> <p>12 MR. GLODT: We have one more question from Dave.</p> <p>13 MR. PFAHLER: Monica, I believe that North Dakota only</p> <p>14 allows 87 and up, I believe that's accurate. So my question is</p> <p>15 based on the map, it appears that there's one pipeline going</p> <p>16 into western North Dakota. Where do they get all their 87 if</p> <p>17 they don't allow 85 in North Dakota, where do they get all</p> <p>18 their 87?</p> <p>19 MS. MAINLAND: Again, we are not talking about the</p> <p>20 feasibility of the refinery and the ability to blend 87 or 85</p> <p>21 or higher at the refinery. We are really talking about the</p> <p>22 conductivity between the refinery and the end destination. So</p> <p>23 that pipeline that ships east can carry a higher octane</p> <p>24 gasoline than what we see shipping south.</p> <p>25 MR. PFAHLER: Thank you.</p>	<p>52</p> <p>1 to come up, this microphone is the audio recording; so I know</p> <p>2 you are addressing the moderators, but do your best to use this</p> <p>3 microphone so the audio piece picks up what you are saying.</p> <p>4 That's just a quick reminder.</p> <p>5 MR. GLODT: Do we have any volunteers to go next?</p> <p>6 MR. TAYLOR: My name is Tom Taylor, T-A-Y-L-O-R,</p> <p>7 Denver region manager for Sinclair Oil. I don't have any real</p> <p>8 prepared remarks. I think Monica spoke to the technical aspect</p> <p>9 of the refining components and pipeline systems, but I guess</p> <p>10 what I'd like to bring to the attention of the committee here</p> <p>11 is I guess there's a perceived notion that there may or may not</p> <p>12 be a supply problem in the state of South Dakota when it comes</p> <p>13 to the eastern half of the state. What I will contend is there</p> <p>14 is absolutely a supply problem in the eastern half of the</p> <p>15 state.</p> <p>16 I have with me the last year's worth of supply outages</p> <p>17 for the terminals that feed the Magellan and Newstar Pipeline</p> <p>18 system. I tried to do a quick count before I came up here; I</p> <p>19 got to 100 and that was about right here. So at any given time</p> <p>20 in the state of South Dakota, one grade of product is not at a</p> <p>21 terminal and that forces drivers to go to extreme lengths to go</p> <p>22 to different terminals and try to find supply in different</p> <p>23 areas.</p> <p>24 And to back that up, November of last year I had a</p> <p>25 letter from all the Congressional members of the state of South</p>
<p>51</p> <p>1 MR. GLODT: What grade of octane is the Exxon Billings</p> <p>2 Refinery currently producing?</p> <p>3 MS. MAINLAND: I will look at my expert.</p> <p>4 MR. HOLM: 81.5, 84, 85.5, and 91.</p> <p>5 MR. GLODT: Do you know the approximate percentages of</p> <p>6 each of those grades?</p> <p>7 MR. HOLM: I don't. It's predominantly 84, which</p> <p>8 blends up to 87 actually in those 87 markets, and the 81.5,</p> <p>9 those are the primary predominant grades.</p> <p>10 MR. GLODT: I can see your comment that North Dakota</p> <p>11 is more of a direct market, South Dakota is an indirect market.</p> <p>12 MS. MAINLAND: That's really what we focused on here,</p> <p>13 Jason, is the refinery can blend up varying grades. We also</p> <p>14 have to use tanks to pick specific grades of what we blend, but</p> <p>15 then it's really what can go into the pipelines for delivery to</p> <p>16 the terminals that impacts what the terminals can see.</p> <p>17 MR. GLODT: Any other questions? Thank you very much,</p> <p>18 Monica.</p> <p>19 MS. MAINLAND: Appreciate your time this morning.</p> <p>20 MR. GLODT: We will take a five-minute break and let</p> <p>21 our reporter's fingers rest.</p> <p>22 (Whereupon, the hearing was in recess at 11:21 a.m.,</p> <p>23 and subsequently reconvened at 11:29 a.m., and the following</p> <p>24 proceedings were had and entered of record:)</p> <p>25 MR. JONES: A quick reminder for those that are left</p>	<p>53</p> <p>1 Dakota requesting Sinclair and all of the refiners and pipeline</p> <p>2 shippers to make a collaborative effort to increase supply to</p> <p>3 South Dakota because it was impacting agriculture industries</p> <p>4 and the general public.</p> <p>5 There has been hours of service waivers that the</p> <p>6 governor of this state and the governor of North Dakota have</p> <p>7 issued over the last year; so the impact is real, it's</p> <p>8 palpable, and I think the state and consumers here in the state</p> <p>9 can attest to that. We have seen bagged pumps where stations</p> <p>10 just don't have gas in order to sell their product to people,</p> <p>11 people waiting at stations for semi trucks to actually deliver</p> <p>12 product so they can fill their cars up and get going.</p> <p>13 Transport drivers will sit in line at terminals for anywhere</p> <p>14 from eight to 10 hours on occasion waiting for pipelines to</p> <p>15 actually refill tanks at terminals. So it's a very real</p> <p>16 problem.</p> <p>17 That's sort of where Sinclair's concern is with the</p> <p>18 85-octane rule, is with the Congressional members out in</p> <p>19 Washington, DC asking us to help, we have a real concern that</p> <p>20 the 87-octane rule will actually lessen the amount of supply in</p> <p>21 the state of South Dakota, therefore, exacerbating the problem</p> <p>22 even further.</p> <p>23 The other thing I'd like to sort of mention is this</p> <p>24 whole thing was brought about by an analysis of the state</p> <p>25 statute as it was written and as adhered to by NIST handbook</p>

85-Octane Rules Hearing

<p>54</p> <p>1 130. On page 10 in that handbook, it talks about the unified 2 engine fuel-law and how many states adhere to it absolutely on 3 an annual basis, how many states adhere to it based off a 4 certain year. I believe South Dakota is 2005, 2006, somewhere 5 in there.</p> <p>6 MR. PFAHLER: 2005.</p> <p>7 MR. TAYLOR: How many states don't even use a NIST 8 standard at all or an NCWM standard at all, and then how many 9 just don't even have anything at all. So as of this year, two 10 were absolutely compliant on an annual basis, eight had an 11 absolute standard based on a previous year, 36 did not even use 12 any standard whatsoever, and eight had a no. So I guess you 13 can infer what you want there, but my inference in that is that 14 these 36 states looked at the logistics and supply situations 15 that they were in and made a prudent decision based on the 16 supply dynamics in their marketplace. There is -- obviously we 17 can all say we want to have this certain fuel standard here and 18 this and that, but when it comes to like what Monica said 19 earlier, you need to make a prudent and wise decision based on 20 what you actually have and not what you want to have.</p> <p>21 One of the others things I'd like to talk about really 22 quick is labeling. I guess for as long as I can remember and 23 before I even got in the industry in Sinclair, 85-octane has 24 been the predominant fuel in the Rocky Mountains. I would like 25 to reiterate what the ExxonMobil folks have to say. We have</p>	<p>56</p> <p>1 the next three or four weeks. We are not sure when Rapid City 2 is, theirs is a little more complex. I think a lot of it is 3 due to the rally. I think they want to be able to keep an 85 4 and an 81-and-a-half there.</p> <p>5 But at this point because of the amount of product 6 that's made at Casper, we switched our product slate over so we 7 sell 81-and-a-half, we sell an 88.8, that's what we make, then 8 we rack blend those so we have an 85 oxy, we have an 87 oxy, we 9 sell an 88 clear, which we call recreational gasoline, and then 10 we have a 91 premium oxy. As Monica said, the reason why we 11 have done this is because there's an RFS 2 mandate that I'm 12 sure many of our people are aware of, but we have to sell a 13 certain amount of renewable fuels with every gallon of product 14 that we produce. That includes diesel fuel, gasoline, 15 everything.</p> <p>16 If we don't, then we have to go out and purchase RINs, 17 and obviously that adds to the cost of what we do because RINs 18 are a marketable item and based on demand can be traded much 19 higher than what we can blend for. That's a thing that's 20 really changed the refining industry in general. I think going 21 forward it's going to be very interesting because as those 22 percentages ratchet up, you are going to get to a point where 23 you are going to need to start looking at blending higher than 24 E10 products on all grades of gasoline unless they fix the RFS 25 2 mandate because they haven't done it as a percentage of</p>
<p>55</p> <p>1 never had a complaint from anybody in all the states that we 2 market in, which is pretty much what they are marketing in. We 3 do get complaints, we get complaints from water in the gas or 4 various other things that might occur; so it's not like the 5 general public doesn't know how to reach out and get ahold of 6 us if something happens. We have not had any member of any 7 state legislature, governor, congressional member or anybody 8 say that any of their constituents has complained about 9 85-octane fuel.</p> <p>10 So that being the case, there's a few things that I 11 would maybe like to show you what might occur if the 85-octane 12 is banned. For example, this is our refinery right here in 13 Casper. When the Rocky Mountain Pipeline started to go through 14 their configurations on reducing the pipeline configurations to 15 81-and-a-half, they don't have the ability to do that here yet, 16 that same thing happened in Cheyenne. Our refinery is still 17 producing the same amount of barrels that it produces every 18 day; so we have had to shift that product elsewhere to sell.</p> <p>19 What we have done is we have moved it down into 20 Denver, we have two terminals down there, one that's ours and 21 one that's run by the Rocky Mountains Plains system, and now we 22 sell out of both of those terminals. So certainly it's easier 23 for us to ship resources within the Rocky Mountain PADD to be 24 able to do that. Cheyenne is supposed to have the 25 81-and-a-half-octane and 88.8 premium storage capacity within</p>	<p>57</p> <p>1 gasoline sales, they have put hard numbers in. That's a 2 concern for us, as well as it should be for the auto 3 manufacturers. An E15, for example, we don't have anybody that 4 UL certifies that for tanks or pumps or anything that I know of 5 yet, and it's a concern that I think sort of leads into my next 6 issue, which is the labeling.</p> <p>7 Sinclair I don't think minds the labels as much as we 8 just want fairness in the industry. Again, our position would 9 be we would rather not have a label because we believe that 10 product is fine. But if you were to have a label, what we 11 would ask is that you have a label on your E15s, the E20s, 12 E30s, E40s and all your other blending products that occur at 13 all the pumps in South Dakota we call blender pumps. Obviously 14 an E20, E30 and E40 and so on won't work with any other regular 15 car either, and I'm sure every auto manufacturer would agree 16 that those pumps should have labels on there as well, 17 determining that maybe you should read your owner's manual or 18 whatever you guys decide to do.</p> <p>19 But then it just gets to the point where you are going 20 to have labels all over the place and what's the public to do? 21 They are going to be very distrustful of the fuel they buy. 22 Again, we haven't had any problems with 85-octane. They are 23 going to be distrustful of the ethanol industry, which has huge 24 impact in the state of South Dakota. So we are just asking for 25 sort of a level of fairness involved here. There's more than</p>

85-Octane Rules Hearing

58

1 one player when it comes to gasoline; there is the ethanol
 2 industry and the gasoline industry. I guess I would take any
 3 questions at this point.
 4 MR. GLODT: Thank you, Tom. How many gallons of
 5 gasoline does Sinclair Casper Refinery produce annually?
 6 MR. TAYLOR: I talk in barrels because it's easier for
 7 me, but we make about 24,000 barrels a day. I'd say we might
 8 sell 1,000 barrels a day out of Rapid City; so it's one
 9 twenty-fourth of our refining capacity would be the Rapid City
 10 terminal.
 11 MR. GLODT: One twenty-fourth of your capacity goes to
 12 Rapid City.
 13 MR. TAYLOR: Uh-huh.
 14 MR. GLODT: 24,000 barrels a day, can you explain how
 15 many -- I suppose it depends on --
 16 MR. TAYLOR: A barrel is 42 gallons; so you do the
 17 math, you take that times 42. To give you an idea -- let me
 18 sort of take you further. To give you an idea of how small the
 19 Rapid City terminal is in comparison to some of our other
 20 terminals and the Casper Refinery, for example, our Denver
 21 terminal at DPT, we average about 28,000 barrel a day of sales.
 22 So we would sell this refinery out every day and then some.
 23 This isn't supplied by Casper, this is supplied by our larger
 24 refinery at Sinclair, but just to give you an idea of the
 25 marketplace dynamics that are taking place in the Rocky

59

1 Mountains.
 2 MR. GLODT: Can you explain also how many gallons -- I
 3 suppose it depends on octane, too, and I assume you could get
 4 more gallons of lower-grade octane from a barrel versus a
 5 higher-grade octane, but can you give us a --
 6 MR. TAYLOR: That's not necessarily true. When we
 7 moved our product slate down to Casper down to an
 8 81-and-a-half, the output was the same. What it allows us to
 9 do is it allows us to run more efficiently, in other words, we
 10 don't have to do as many turn-arounds. Turn-arounds are
 11 detrimental to the supply chain. As you guys know, if your
 12 refinery goes down on a turn-around, they can be down for a
 13 month, two months. So it really allows us to not do that as
 14 often, and when we do, it's more rapid so we are able to, on an
 15 annual basis, produce more product, but on a daily basis, it
 16 doesn't make much difference. The increase that you see in
 17 output is basically due to lack of having to do more
 18 turn-arounds and extended turn-arounds.
 19 MR. GLODT: One twenty-fourth of your capacity goes to
 20 Rapid City. Do you know what percentage of that entire supply
 21 network is provided by Sinclair in Casper?
 22 MR. TAYLOR: I don't know the answer to that. I think
 23 what you probably should refer to is when Bob was there, he was
 24 talking about WRC I think is obviously the largest supplier to
 25 that terminal system, I think he said somewhere around 12,000

60

1 barrels a day.
 2 MR. GLODT: You said Sinclair produces an 87 oxy, I
 3 assume -- well, how do you get the 87 oxy? Is it based on an
 4 85 clear?
 5 MR. TAYLOR: At this current time what we are doing is
 6 we are blending a premium stock with our 81-and-a-half and then
 7 putting ethanol with it.
 8 MR. GLODT: And then you say you produce an 87 clear,
 9 can you --
 10 MR. TAYLOR: It's actually an 88 clear. What our sub
 11 premium is, it's an 88.8; so we actually blend it down to an 88
 12 and we sort of use that as our mid grade recreational gasoline.
 13 There's still a lot of people out there that, for whatever
 14 reason, they just won't put ethanol in their tanks. They might
 15 have ATVs, boats, they might have a nice car that they don't
 16 want to put ethanol in and so we still allow those people to
 17 have the option of a clear product.
 18 MR. GLODT: What percentage of your sales or market is
 19 85-octane?
 20 MR. TAYLOR: That's the -- well, 85 oxy with the
 21 ethanol in it, that's by far the most, the vast majority of all
 22 of our sales.
 23 MR. GLODT: Do you have an approximate percentage?
 24 MR. TAYLOR: Yeah, it's probably somewhere close to
 25 what Monica and Mark said, somewhere in the 70 to 80 percent

61

1 range.
 2 MR. GLODT: Can you further explain why we can't get
 3 the 85 or 87 oxy or 88 clear in the Rapid City terminal?
 4 MR. TAYLOR: I think you would have to refer to Monica
 5 and what she said about the pipeline logistics. She's the
 6 refinery manager; she knows more about that than I do. I'm
 7 more the downstream sales guy; so what I do is I just sell it
 8 once it gets to -- after she ships it. But what she says is
 9 essentially true, like this pipeline right here, our Medicine
 10 Bow Pipeline, that's a proprietary pipeline; so we can put
 11 anything in there we want to because nobody else ships on it.
 12 Once you get into pipelines like Rocky Mountain or
 13 Pioneer or Seminoe, that's a common carrier pipeline; so it's
 14 almost like an ASTM committee, they have to get together with
 15 the refining group and say, this is what we want to do, does
 16 anybody want to do this with us, and then a couple people say
 17 no and then it goes on for a while and until finally there's a
 18 consensus on what the uniform product codes in that pipeline
 19 are going to be.
 20 MR. GLODT: Do you know a percentage of, looking at
 21 all the fuel that comes through that pipeline to the Rapid City
 22 terminal, do you know the percentage breakdown between how much
 23 is provided by Exxon refineries, Sinclair refinery, the Wyoming
 24 refinery?
 25 MR. TAYLOR: No, I don't. What I can tell you right

85-Octane Rules Hearing

<p style="text-align: right;">62</p> <p>1 now is currently Sinclair isn't shipping any product to Rapid 2 City because our product slate right now is the 81.5 and the 3 88.8, and until Rocky Mountain Pipeline finishes their 4 construction rebuilds, we are shipping that product elsewhere. 5 MR. GLODT: What would be the result if South Dakota 6 strictly banned 85-octane in all of South Dakota, what would 7 Sinclair's reaction be? 8 MR. TAYLOR: Listen, I'm a native South Dakotan, I 9 don't want to see the state suffer at all, but what I would 10 tell you from a business perspective is we would have to do an 11 analysis of the economics and whether or not it would be easier 12 for us to ship that to other places and sell it in other 13 places. Obviously what Monica said is true, when you take a 14 product and you rack blend it, a premium into an unleaded, you 15 are sort of competing against guys that have geared their 16 refinery to sell an 87 possibly; so you are essentially -- in 17 our viewpoint, we are blending a premium in with an unleaded 18 product and we are raising the cost of that product. If we 19 don't have to do that, in another marketplace, say Cheyenne or 20 Rock Springs or Denver, we will have to make that choice. I 21 don't want to see it happen, I don't want to get to that point. 22 MR. GLODT: Will the current label requirement or 23 variation of the current label requirement as in our emergency 24 rule have an impact on whether or not you continue to provide 25 fuel to South Dakota?</p>	<p style="text-align: right;">64</p> <p>1 that's constant in the petroleum business is change. So I 2 think Sinclair and everybody else would have to change if a new 3 ASTM standard came out. 4 MR. PFAHLER: I'll ask you the same question I asked 5 Monica. You said you like the idea of ASTM relooking at the 6 standard. My understanding is one of the things they are 7 looking at is a minimum octane for the first time ever. Would 8 Sinclair support a move to a minimum 87-octane? 9 MR. TAYLOR: What I would say is I would wait to see 10 what the ASTM said. They might say they don't like that; we 11 don't know. Any scientific guesses on my part on what they 12 decide to do or not do I think at this point is pretty 13 premature. 14 MR. PFAHLER: I'd like to also ask the question, you 15 refer to 85-octane as a perfectly fine product, but once again, 16 it's not recommended for virtually any engine manufacturer 17 today. How can you justify your statement? It can meet the 18 ASTM standard, but... 19 MR. TAYLOR: I guess what I would tell you is that 20 with the amount of product that we sell out there in the whole 21 PADD 5 area, even the auto manufacturers, they don't have 22 any -- they have done their testing and stuff, but what I will 23 say is that the empirical evidence on the ground is that we 24 haven't had any complaints, we just flat out haven't. 25 MR. PFAHLER: The last question I've got, most of the</p>
<p style="text-align: right;">63</p> <p>1 MR. TAYLOR: It depends. Like I said earlier, we have 2 two issues here. One is that we think that the labeling 3 requirement is excessive. In our opinion, 85-octane is a 4 perfectly fine product, and then the second issue obviously is 5 an issue of fairness. Like I said earlier, there's all these 6 E10 products in this state that have been around and been 7 available at pumps for some time, and I would contend if you 8 have to label an 85-octane fuel, you need to label every one of 9 those, too. 10 MR. GLODT: You clearly support the sale of 85-octane, 11 at least in the western part of the state. Do you have an 12 opinion as to how broadly 85-octane should be allowed in the 13 state of South Dakota? 14 MR. TAYLOR: I guess our contention is that we would 15 adhere to the ASTM standard which would be the 102nd meridian; 16 that's what we try to do with most everything that we deal with 17 for our part of the situation. I was actually really 18 encouraged that the ASTM was going to relook at this. It 19 hasn't been looked at for quite some time, and if they decide 20 to standardize or change those specs, we will have to look at 21 doing something ourselves. 22 Obviously, as Monica said, the industry evolves, 23 there's no question about it. We have evolved, RFS 2 has been 24 the latest evolutionary thing that we have had to deal with and 25 biofuels and different things like that, but the one thing</p>	<p style="text-align: right;">65</p> <p>1 states across the country may or may not have a minimum octane, 2 but they do by and large utilize 87, you don't see 85 much out 3 of the Rocky Mountains, and they have to meet the same 4 Renewable Fuel Standards; so why is it workable elsewhere and 5 not workable in the Rocky Mountain states? 6 MR. TAYLOR: A couple factors. Rocky Mountain PADD 5 7 area predominantly has very small refineries. So there is 8 certain parts of the refining business that the costs are 9 equalized no matter how large the refinery is. So if you have 10 a 440,000 barrel a day refinery and we have a 24 and then an 11 80, there's a certain floor where they all -- we all have to 12 pay about the same amount of money to do certain things with 13 the refinery. So what you are seeing down in the gulf and 14 areas like that where those mega refineries are is they have 15 chosen at this point in time to simply purchase RINs. For them 16 it makes more sense to do that. For us with our economics, we 17 really can't afford to go out and buy RINs. 18 The other thing that they have that is different from 19 us is they have the ability to ship multiple directions, and 20 that's one reason why you see product outages in the Dakotas, 21 because for them it's more economical at this point in time to 22 ship overseas or on the Colonial Pipeline up to the east coast 23 or along the gulf coast or in the Chicago market. Each one of 24 those markets trades gasoline prices differently, and those 25 guys are going to ship it wherever they can make the most</p>

85-Octane Rules Hearing

66

1 money. So you are going to see, I think in the future, a
2 continued problem with supply in the mid continent based on the
3 volatility of the marketplace.

4 I saw a thing at one of our conventions about -- gosh,
5 this was maybe eight or nine years ago, there was a guy by the
6 name of Tom Kluse (phonetic) and he runs a company called OPIS,
7 It's OPIS Reporting, they report on pricing, they also have
8 sort of a news agency they do, and he had this interesting
9 chart on the wall. He said back in 1996, the average price
10 fluctuation of gasoline on a daily basis was a penny. And then
11 he said I think it was 2005 -- then he said in 2005 the average
12 daily price fluctuation of gasoline was a nickel, and then he
13 brought up another interesting chart and next to that chart was
14 the amount of wet barrel traders, which are people like us that
15 actually manufacture the product and then the amount of
16 speculators, and the amount of speculators in the industry and
17 wet barrel traders back then were about 50/50. In 2005 the
18 speculators took about 80 percent of that business.

19 So that just gives you an idea that those gulf coast
20 guys and people that have the ability to ship really have to be
21 nimble to figure out where they are going to maximize their
22 economics at. And I think that's -- that's indirectly I think
23 responsible for some of the issues South Dakota has had with
24 supply. As speculators become more and more involved in the
25 industry and are slowly pushing wet barrel traders out, you are

67

1 going to see massive supply disruptions throughout probably
2 most of the United States.

3 MR. GLODT: If South Dakota were to strictly ban
4 85-octane in the entire state, would our marketers or suppliers
5 have the opportunity or ability to go directly to the refinery
6 in Casper or Billings to continue to source 87 or 87 --

7 MR. TAYLOR: Technically they would; however, in order
8 for us to comply with South Dakota law, when you go to a
9 refinery, for example, and a truck pulls in, they enter a petro
10 X number and then they have a load number. That load number is
11 something that we put into the system and it allows them to be
12 taxed properly; so in other words, if they go to the Casper
13 rack and they type in the load number for South Dakota export,
14 they get taxed with the South Dakota taxes. We have a Wyoming
15 export, a Colorado export. So we would probably have to just
16 take all the South Dakota exports out of that terminal. That
17 way if they do want to pull back into the state, they would
18 have to do it without a South Dakota export.

19 MR. GLODT: It sounds like we do that on a regular
20 basis now because as our terminals in South Dakota are
21 frequently out, fuel is rationed, we have suppliers going to
22 Billings or the eastern part of the state where in recent weeks
23 we have had, now it's moved towards diesel, about four weeks
24 ago there were days where we were out of unleaded fuel in five
25 of seven terminals with two of the terminals almost out. Now

68

1 we are out of diesel in almost all of our terminals; so they
2 are frequently traveling out of state because there is no
3 product at any terminal.

4 MR. TAYLOR: The other interesting thing, too, is when
5 you have a fuel transport, for example, there's usually four
6 compartments in there; so 90 percent of the time it's a mixed
7 transport so you will have maybe two compartments of diesel,
8 one of unleaded and one of premium. And if there's one of
9 those products that's out at a terminal, then they have to make
10 that choice logistically are we going to just pull the products
11 that are available there or are we going to go to a different
12 terminal where we can get all four compartments filled. So I
13 think there's probably some transportation guys that can speak
14 better to that, but it does create some very interesting
15 choices that people make.

16 MR. GLODT: I suppose it raises the question, too, and
17 you are correct, probably more appropriate for the suppliers in
18 regard to their infrastructure capability, the number of trucks
19 they have got to even accomplish something like that, and
20 undoubtedly it will have an increase on the price of gasoline
21 because you have to cover the transportation costs to get it
22 from --

23 MR. TAYLOR: Well, and I think that's why Governor
24 Daugaard prudently put in the hours of service waiver that he
25 did. In North Dakota the hours of service waiver, I think we

69

1 spoke to this at the June meeting, was somewhere over 200 days
2 last year. That's significant. And these drivers just don't
3 have -- they have to abide by the federal rules and everything
4 else. They don't have the time to run everywhere and get the
5 products that they need without a waiver.

6 MR. GLODT: That's why there's -- that's probably why
7 it's such a sensitive issue in South Dakota, that any shortage
8 creates challenges for us, and it may not be an issue of
9 getting fuel, but it's a matter of how far out of South Dakota
10 you have got to drive to get that fuel, and I've heard stories,
11 of course Billings in the west is used a lot, but even Oklahoma
12 City, if you are in the eastern part of the state, they are
13 having to travel fairly significant distances, which again at
14 the end of the day results in much higher costs of gasoline.

15 MR. TAYLOR: I agree. The biggest one last year other
16 than the state of South Dakota was actually the western half of
17 North Dakota with diesel fuel because of the oil boom up there.
18 There was not enough product sold locally up there; so we had
19 customers that were actually pulling product out of Denver and
20 transporting it by truck all the way up to North Dakota because
21 they just wanted to get diesel fuel. They just needed it and
22 they couldn't get it anywhere else. That's significant, that's
23 probably about a 56-cent per mile freight rate.

24 MR. GLODT: How much did you say?

25 MR. TAYLOR: Probably in the fifties, somewhere in

85-Octane Rules Hearing

<p>70</p> <p>1 there. It does impact the cost to the consumer or to the</p> <p>2 business or to the agricultural person that you are dealing</p> <p>3 with.</p> <p>4 MS. HOWELL: I had just two questions. First when you</p> <p>5 opened with the 36 non-fully NIST compliant states, that list,</p> <p>6 that's just a list of everybody that's not compliant with every</p> <p>7 single NIST standard they promulgate, right? That is not a</p> <p>8 list of states that allow 85.</p> <p>9 MR. TAYLOR: What it says here is it has yes with an</p> <p>10 asterisk, and I'd be happy to give this to you when I'm done,</p> <p>11 but the definition of that is law or regulation enforced but</p> <p>12 not based on an NCWM standard.</p> <p>13 MS. HOWELL: I think I probably have access to the</p> <p>14 same record, but my understanding is aside from the Rocky</p> <p>15 Mountain states, there's just a couple outlying states that do</p> <p>16 currently allow 85. They might not be compliant with</p> <p>17 everything with NIST, but it's not 36 states that allow that.</p> <p>18 MR. TAYLOR: Yeah, I was only bringing that to your</p> <p>19 attention because I think a lot of these states have their own</p> <p>20 separate issues with supply and have determined that they can't</p> <p>21 100 percent adhere to that NIST standard because they have to</p> <p>22 do what they need to do.</p> <p>23 MS. HOWELL: So you said right now Sinclair isn't</p> <p>24 selling in Rapid City since the Rocky Mountain Pipeline hasn't</p> <p>25 been retrofitted?</p>	<p>72</p> <p>1 supply we have right now?</p> <p>2 MR. TAYLOR: No, we stopped shipping into Rapid City</p> <p>3 in the early part of the summer, but what I will tell you is</p> <p>4 that the supply situation in the state of South Dakota has been</p> <p>5 going on for a lot longer than that.</p> <p>6 MS. HOWELL: Thank you.</p> <p>7 MR. GLOTT: Thank you, Tom. That brings us to our</p> <p>8 noon lunch break. We will take a break for one hour, we will</p> <p>9 resume at one o'clock.</p> <p>10 (Whereupon, the hearing was in recess at 12:01 p.m.,</p> <p>11 and subsequently reconvened at 1:06 p.m., and the following</p> <p>12 proceedings were had and entered of record:)</p> <p>13 MR. JONES: We will get started, if everyone would</p> <p>14 take their seats. If you plan on addressing the group, please</p> <p>15 sign in over there and then remember to speak in the microphone</p> <p>16 so we get an accurate recording of what you have to say.</p> <p>17 MS. HOWELL: I think Tom Byers was going to speak</p> <p>18 next.</p> <p>19 MR. BYERS: Good afternoon. My name is Tom, T-O-M,</p> <p>20 Byers, B-Y-E-R-S, and I am the senior governmental affairs</p> <p>21 representative for Magellan Midstream Partners in Tulsa,</p> <p>22 Oklahoma. Magellan appreciates the opportunity to comment on</p> <p>23 this proposal to permit the sale of 85-octane gasoline. While</p> <p>24 the intent of the rule is to expand available gasoline supplies</p> <p>25 throughout the state, it could in fact have the opposite effect</p>
<p>71</p> <p>1 MR. TAYLOR: We are purchasing from other suppliers at</p> <p>2 that point in this market or in Rapid City's market to help our</p> <p>3 customers out.</p> <p>4 MS. HOWELL: So you are still selling?</p> <p>5 MR. TAYLOR: Yeah, but they are not our barrels. It's</p> <p>6 our intention to, once the 81-and-a-half infrastructure rebuild</p> <p>7 is done, to start reshipping on that pipeline.</p> <p>8 MS. HOWELL: So if we did choose to ban 85 or we</p> <p>9 allowed 85 with a label that you didn't feel was appropriate</p> <p>10 and you pulled out, there would be a reduction, or wouldn't</p> <p>11 there, from what's being sold in Rapid City?</p> <p>12 MR. TAYLOR: The reduction is there right now. I</p> <p>13 guess what I will tell you is what we would try to do is we</p> <p>14 would try to first look at the analysis of us putting barrels</p> <p>15 into that system while at the same time trying to find out</p> <p>16 maybe a long-term supply agreement with another refiner that is</p> <p>17 still willing to ship into that system. Obviously if we went</p> <p>18 with that exchange, what we call exchange program or an</p> <p>19 off-rack purchase deal with them, that's not going to increase</p> <p>20 the amount of barrels there, I'm just going to be purchasing</p> <p>21 what he would have normally sold at that terminal anyway. I</p> <p>22 will have a small piece of that we can sell as a Sinclair</p> <p>23 product.</p> <p>24 MS. HOWELL: So if, for whatever reason, you do decide</p> <p>25 to pull out, it wouldn't really be a reduction from what the</p>	<p>73</p> <p>1 in eastern South Dakota. Negative supply issues may develop at</p> <p>2 our Sioux Falls and Watertown petroleum distribution terminals</p> <p>3 if there is a demand for 85-octane gasoline because of the</p> <p>4 proposed rule. And therefore, we are opposed to the sale of</p> <p>5 85-octane gasoline in eastern South Dakota.</p> <p>6 Magellan owns and operates over 9600 miles of refined</p> <p>7 product pipeline and more than 80 petroleum products and</p> <p>8 renewable fuels distribution terminals located throughout 22</p> <p>9 states, including those that are in Sioux Falls and Watertown.</p> <p>10 We operate our pipeline as a common carrier system and we</p> <p>11 generally do not own the products that we transport and store</p> <p>12 at our terminals. These products are owned by our customers,</p> <p>13 which we usually refer to as shippers or position holders, and</p> <p>14 they include refiners, petroleum traders, petroleum marketers,</p> <p>15 renewable fuel producers, and renewable fuel marketers.</p> <p>16 While the proposed rule is not a requirement to reduce</p> <p>17 the octane from 87 to 85, it would legalize the sale of</p> <p>18 85-octane gasoline to motorists in eastern South Dakota.</p> <p>19 Although concerns have been raised regarding consumer issues,</p> <p>20 automobile warranty statements and engine durability, national</p> <p>21 gasoline standards and the adequacy of retail labeling, market</p> <p>22 dynamics could still create a demand for 85-octane gasoline in</p> <p>23 the eastern part of the state.</p> <p>24 Adding a new grade of gasoline to our system would</p> <p>25 potentially increase supply outages at our terminals.</p>

85-Octane Rules Hearing

<p style="text-align: right;">74</p> <p>1 Magellan's terminals in Sioux Falls and Watertown receive 2 refined petroleum products via the Magellan Pipeline system 3 from refineries in Texas, Oklahoma, Kansas, Minnesota, and 4 Wisconsin, as well as other third-party pipelines which connect 5 into the Magellan system. In fact Magellan's pipeline system 6 is connected either directly or indirectly to over 40 percent 7 of the refining capacity in the United States.</p> <p>8 Every refinery with access to the Magellan system 9 manufactures 87-octane gasoline. Replacing 87 with 85-octane 10 gasoline would greatly reduce the number of refinery origin 11 sources, which in turn would lead to increased terminal 12 outages. Reducing the minimum octane requirement from 87 to 85 13 would potentially create the need to add new terminal 14 infrastructure. A percentage of the gasoline that is located 15 at terminals in eastern South Dakota is delivered to retail 16 stations and commercial accounts in the state of Minnesota, 17 which is not considering a change to their octane requirements.</p> <p>18 In order to add a new grade of gasoline at our 19 terminals in South Dakota, we would need to build adequate 20 storage for the new product, not only in various strategic 21 locations along our pipeline system, but also at the South 22 Dakota terminals. The new storage would require long-term 23 financial commitments from our customers, which is not likely. 24 Even if we did obtain the customer commitments, permitting and 25 construction of the additional storage would take 18 to 24</p>	<p style="text-align: right;">76</p> <p>1 inefficiencies.</p> <p>2 I just want to add, based on some of the things that 3 were said this morning, from Magellan's standpoint as far as 4 our terminal is concerned in Sioux Falls, we have not 5 experienced the supply problems that the people have raised. 6 In fact going back historically, in 2010 we had zero load days 7 for no lead gasoline. In 2011 there were a total of four 8 throughout the year, and in 2012, since the beginning of 2012, 9 we have only experienced one day when we were not able to load 10 end grade, what we all end grade or no lead gasoline. So while 11 I understand that there may be -- that people have experienced 12 problems, that simply has not been something that we have seen 13 as far as no lead gasoline is concerned at our Sioux Falls 14 terminal.</p> <p>15 We appreciate the opportunity to be able to comment on 16 the proposed rule, and we certainly request that you would take 17 our considerations into concern as you move forward. And I 18 thank you for the opportunity to be here and to present our 19 comments today.</p> <p>20 MR. GLODT: Thank you very much. In regards to the 21 supply issue, would you acknowledge that there are supply 22 challenges in the western part of the state that are not met by 23 Magellan's terminals?</p> <p>24 MR. BYERS: We do not deliver product to the western 25 part of the state.</p>
<p style="text-align: right;">75</p> <p>1 months to complete. And also, offering storage and 2 distribution services for 85-octane gasoline would increase the 3 loading time at our terminals.</p> <p>4 Downstream blending could cause some quality 5 implications. The proposed rule would potentially create a 6 market for downstream blending of natural gasoline, which is 7 sometimes referred to as drip gasoline, into gasoline after it 8 is located at the petroleum terminal. In other words, company 9 X, for example, could load 87-octane gasoline with 10 percent 10 volume ethanol, which creates an 89-octane fuel. Company X 11 could then blend approximately 10 percent natural gasoline 12 available at either an ethanol plant or a bulk plant into the 13 fuel, which would reduce the octane. Blending gasoline 14 components downstream of pipeline and terminal operations 15 increases the possibility of quality implications and triggers 16 federal reporting requirements.</p> <p>17 Trucking 85-octane gasoline long distances would also 18 have negative consequences. Pipelines remain the safest, the 19 most reliable, and most cost effective mode of transportation 20 when moving large volumes of energy from where it's produced to 21 where it's consumed. Transporting 85-octane gasoline to 22 eastern South Dakota from the traditional Rocky Mountain supply 23 sources in central and western South Dakota via transport truck 24 would create increased traffic throughout the state as well as 25 increased air emissions and would result in transportation</p>	<p style="text-align: right;">77</p> <p>1 MR. GLODT: Do you know what percentage of your total 2 or what total -- what percentage of the fuel in South Dakota is 3 supplied by the Magellan Pipeline?</p> <p>4 MR. BYERS: I do not have that figure with me. I will 5 be glad to supply you with that.</p> <p>6 MR. GLODT: In regards to refineries and the grades of 7 octane that they are producing, we heard comment from Rocky 8 Mountain refiners that there's a transition occurring for a 9 lower-base octane of 81-and-a-half and we have heard other 10 reports that other eastern and far west refiners are actually 11 transitioning to a lower-base octane of 85. Is that something 12 that you are seeing occur or -- I guess I'll ask that question 13 first. Is that something that you are seeing occur?</p> <p>14 MR. BYERS: We are not aware of any shipper on the 15 Magellan Pipeline system that are interested in 85-octane. We 16 have had no expression of interest or requests for that.</p> <p>17 MR. GLODT: We have had reports that refiners that 18 supply the upper midwest, within the next year or two, will be 19 including a lower-base octane of 85 in their refineries. Is 20 that something that you are aware of?</p> <p>21 MR. BYERS: I understand that one refinery may be 22 shipping some 85 from somewhere in the upper midwest, but 23 again, none of that is going into our system nor have we had a 24 request for it.</p> <p>25 MR. GLODT: Do you know what percentage of your total</p>

85-Octane Rules Hearing

<p style="text-align: right;">78</p> <p>1 distribution comes to South Dakota terminals?</p> <p>2 MR. BYERS: No. I don't have that figure. I do not.</p> <p>3 MR. GLODT: We know that when we have frequent</p> <p>4 shortages in South Dakota, more attributable to the Newstar</p> <p>5 system, which is formerly Valero on that map, it's actually</p> <p>6 listed as Valero, there are frequent occasions in the summer</p> <p>7 where they are low and rationing gas or are actually out. That</p> <p>8 doesn't appear to be nearly as common with Magellan, based on</p> <p>9 the numbers you just stated. Can you further explain how</p> <p>10 that -- how the regular shortages or outages with Newstar</p> <p>11 system impact that eastern supply throughout -- or the supply</p> <p>12 of fuel in eastern South Dakota?</p> <p>13 MR. BYERS: Well, I'm certainly not going to -- I</p> <p>14 don't want to speak to Newstar's system. If a given terminal</p> <p>15 is out of product, then obviously a marketer or a jobber is</p> <p>16 going to go to another terminal that may have product; so</p> <p>17 beyond that general response, I'm not sure I can. . .</p> <p>18 MR. GLODT: Do you know how your volume or the volume</p> <p>19 of fuel that comes through the Magellan Pipeline compares to</p> <p>20 the total volume through the Newstar Pipeline?</p> <p>21 MR. BYERS: I do not.</p> <p>22 MR. GLODT: If the Rapid City terminal were shut down</p> <p>23 or refiners -- I guess refiners either significantly reduced</p> <p>24 the volume of fuel supplied to that terminal or it was shut</p> <p>25 down, would Magellan be able to meet supply needs in western</p>	<p style="text-align: right;">80</p> <p>1 MR. BYERS: Well, if it's someone that has a</p> <p>2 contractual relationship with us and we have product at a</p> <p>3 terminal, I don't know why they would go, if that's the</p> <p>4 question. Magellan has a tiered system where we attempt -- we</p> <p>5 have what we call distribution terminals, which are the larger</p> <p>6 facilities, Tulsa, Kansas City, Des Moines, Omaha, Minneapolis,</p> <p>7 and we make it our -- we do our best efforts to keep those</p> <p>8 supplied first. Then below that what we have are called</p> <p>9 primary terminals, Sioux Falls is an example of that, and then</p> <p>10 below that we have secondary terminals. Those priorities are</p> <p>11 based on the information that our shippers give us and they are</p> <p>12 the ones telling us where they would like to have product</p> <p>13 available ideally, and so we don't just haphazardly choose</p> <p>14 those locations, those are based on information that we receive</p> <p>15 from our shippers. So we do our best to keep -- certainly</p> <p>16 generally our distribution terminals are maintained with</p> <p>17 product and then less so as you go down the tier.</p> <p>18 MR. HOWES: Is it appropriate for us to ask a</p> <p>19 question?</p> <p>20 COURT REPORTER: I don't know who's talking.</p> <p>21 MR. GLODT: I think you can save any comments for your</p> <p>22 turn to comment, but it's not appropriate for audience members</p> <p>23 to ask questions directly of the commenter.</p> <p>24 MS. HOWELL: I just wanted to fully understand your</p> <p>25 explanation of how adding 85 to our repertoire as it were could</p>
<p style="text-align: right;">79</p> <p>1 South Dakota?</p> <p>2 MR BYERS: That's really difficult for me to say. We</p> <p>3 do not own any of the product that we transport and store on</p> <p>4 behalf of our customers. We are simply a tow road, if you</p> <p>5 will, getting product from point A to point B and storing it,</p> <p>6 and so quite frankly, we can only ship and store what our</p> <p>7 customers give, and to say whether we could address something</p> <p>8 in the western part of the state and whether companies would be</p> <p>9 willing to drive east to get it, those are questions I really</p> <p>10 can't answer.</p> <p>11 MR. GLODT: I suppose economics have a factor into how</p> <p>12 far the suppliers are willing to transport that by truck, but</p> <p>13 out of necessity they may not have any other options, which</p> <p>14 leads to another question. We frequently get reports that</p> <p>15 suppliers are having to travel great distances out of state to</p> <p>16 find terminals to provide product. However, based on your</p> <p>17 comments that it's very -- while you may have low volumes,</p> <p>18 rarely are you out, maybe further explain why our suppliers are</p> <p>19 having to travel out of state for fuel when you appear to have</p> <p>20 available quantities, at least from the supply network in</p> <p>21 eastern South Dakota, realizing you don't supply west. I'll</p> <p>22 rephrase the question.</p> <p>23 MR. BYERS: Was there a question there? I'm sorry.</p> <p>24 MR. GLODT: Why are suppliers having to travel out of</p> <p>25 state when you have got gas?</p>	<p style="text-align: right;">81</p> <p>1 cause an outage. You are saying if you had to add 85 to meet</p> <p>2 the demand in the eastern South Dakota market, there would be a</p> <p>3 shortage because because of that you would be shipping less 87,</p> <p>4 89, is that what you mean to cause a shortage.</p> <p>5 MR. BYERS: As Ms. Mainland explained this morning</p> <p>6 with the efficiencies of pipeline transportation, we have what</p> <p>7 we call an open stock system, which means that if a particular</p> <p>8 product meets the specifications for our pipeline, it can be</p> <p>9 commingled together and shipped together in a single batch.</p> <p>10 Well, that's much more efficient than having little individual</p> <p>11 batches, and so the more specialty products or boutique fuels</p> <p>12 or whatever you might want to call them we have, the more that</p> <p>13 hampers the efficiency of our pipeline, in addition to the fact</p> <p>14 that we would have to have additional infrastructure to handle</p> <p>15 that 85-octane.</p> <p>16 MS. HOWELL: It's more like instead of a continuous</p> <p>17 flow of gasoline out of your pipeline for an hour, you would</p> <p>18 have five minutes and then a 10-minute break? I'm just using</p> <p>19 numbers without any basis.</p> <p>20 MR. BYERS: You can't have the large batches being</p> <p>21 combined together and shipped as one down the pipeline.</p> <p>22 MS. HOWELL: And just to clarify what you were saying</p> <p>23 before, since you don't own any of the gas that you are sending</p> <p>24 through your pipeline, it's owned or branded by whoever puts it</p> <p>25 in and it's up to them who can buy it; so at any given point, a</p>

85-Octane Rules Hearing

<p style="text-align: right;">82</p> <p>1 random person can't come to your terminal and buy gasoline?</p> <p>2 MR. BYERS: No, a party will tell us we need to get</p> <p>3 product from Houston to Fargo, we transport it for them. We</p> <p>4 have a relationship with them and they will then tell us who</p> <p>5 can come to the terminal and pick up product on their behalf.</p> <p>6 We have to have a contractual relationship with whoever comes</p> <p>7 to our terminal. We have to have an access agreement and we</p> <p>8 have to have insurance coverage to make sure there isn't a</p> <p>9 problem in the event that they come in.</p> <p>10 MS. HOWELL: Not to pin you down to specific numbers,</p> <p>11 but since Mr. Taylor testified that they have already, Sinclair</p> <p>12 has already stopped shipping gasoline to Rapid City as of this</p> <p>13 summer, do you know, have you had any increased demand that</p> <p>14 anybody noticed over the summer that might be attributable to</p> <p>15 less gas being shipped into western South Dakota?</p> <p>16 MR. BYERS: Not that I'm aware of.</p> <p>17 MS. HOWELL: Thank you.</p> <p>18 MR. GLODT: Who has ultimate authority over what grade</p> <p>19 of octane is transported through your pipeline?</p> <p>20 MR. BYERS: Well, I heard Ms. Mainland say this</p> <p>21 morning that a pipeline had the ultimate authority. That's</p> <p>22 true, we are not going to put something in our pipeline that is</p> <p>23 going to damage the pipeline or is a problem; so we have the</p> <p>24 ultimate say. But on the other hand, we can only ship what we</p> <p>25 are given; so if one of our customers wants a given product</p>	<p style="text-align: right;">84</p> <p>1 you exactly how far our bill of lading, how far people take</p> <p>2 product, but I don't believe we would have an opinion one way</p> <p>3 or the other as far as a specific line being drawn.</p> <p>4 MR. PFAHLER: Thank you.</p> <p>5 MS. HOWELL: Just a follow up. You said you ship</p> <p>6 whatever anybody gives you and it's up to you. But you just</p> <p>7 previously said that you are not currently outfitted to</p> <p>8 transport 85, right?</p> <p>9 MR. BYERS: We do not have the tankage, the</p> <p>10 infrastructure to handle 85-octane at this time.</p> <p>11 MS. HOWELL: So even if somebody wanted to send 85</p> <p>12 through your pipeline right now, they couldn't?</p> <p>13 MR. BYERS: Well, if somebody -- if somebody was</p> <p>14 interested in doing that and they were willing to enter into a</p> <p>15 long-term commitment that would allow us to underpin the</p> <p>16 construction of additional tankage, then yes, we would be more</p> <p>17 than happy to do that. I won't say more than happy to, but we</p> <p>18 would be capable of doing that.</p> <p>19 MS. HOWELL: But I assume it takes a while to make</p> <p>20 those kinds of agreements and build that sort of</p> <p>21 infrastructure.</p> <p>22 MR. BYERS: As I said, infrastructure -- permitting</p> <p>23 and infrastructure would be 18 to 24 months.</p> <p>24 MR. GLODT: Any further comments?</p> <p>25 MR. BYERS: I don't believe so. Thank you for the</p>
<p style="text-align: right;">83</p> <p>1 transported from point A to point B, we are going to do that.</p> <p>2 We are a customer-oriented business; so in that sense, I guess</p> <p>3 it's the customer that determines what octane is shipped.</p> <p>4 MR. PFAHLER: Jason asked you a tough question about</p> <p>5 whether you could make up for shortages, if there were in</p> <p>6 western South Dakota, and your response was that you don't own</p> <p>7 the fuel so you couldn't really respond to that. I think this</p> <p>8 is a little different question, but would you have the capacity</p> <p>9 to make up for the shortages, understanding that you don't</p> <p>10 actually own the product?</p> <p>11 MR. BYERS: Well, again, Dave, if somebody doesn't</p> <p>12 give us the product in Houston or Oklahoma or Kansas or</p> <p>13 Minnesota or somewhere to ship, we don't have it. So I really</p> <p>14 can't speak to whether we could supply -- first of all, we</p> <p>15 don't have any infrastructure in western Oklahoma (sic), but if</p> <p>16 you are assuming for the sake of argument it would be trucked</p> <p>17 from say Sioux Falls or Watertown out there, it's just</p> <p>18 impossible for me to say, not having any control over the</p> <p>19 product or the amount of the product.</p> <p>20 MR. PFAHLER: Second question is that you indicated,</p> <p>21 for the reasons that you stated, you do not want to see</p> <p>22 85-octane in eastern South Dakota. Assuming there was some</p> <p>23 line of demarcation, does Magellan have a preference where that</p> <p>24 might be?</p> <p>25 MR. BYERS: No, I don't believe we do. I can't tell</p>	<p style="text-align: right;">85</p> <p>1 opportunity.</p> <p>2 MR. GLODT: Thank you for your time and expertise. I</p> <p>3 believe we are down to four more that officially signed up on</p> <p>4 the list, but again, if anybody else wants to make comments</p> <p>5 after the next four speakers, you are absolutely welcome and</p> <p>6 encouraged. I've got remaining on the list Andy Howes. Andy,</p> <p>7 would you like to go now?</p> <p>8 MR. HOWES: Sure.</p> <p>9 MR. GLODT: I have Ron Lamberty of ACE, and the Corn</p> <p>10 Growers, Gary, and Dawna Leitzke with the petroleum marketers.</p> <p>11 MR. HOWES: Thank you very much for having us here</p> <p>12 today. This is not unlike the meeting in April. This has been</p> <p>13 very informative for those of us in the industry as we try to</p> <p>14 work to find a solution to this problem. I do want to -- the</p> <p>15 reason I just asked, I have to point this out, is I would</p> <p>16 respectfully ask Magellan to revisit those numbers on the</p> <p>17 outages because, for example, this morning Magellan did not</p> <p>18 have gas in Sioux Falls, and there is certainly more than one</p> <p>19 day, and I'm just curious, maybe there's a criteria or a</p> <p>20 formula that's used to arrive at that total. Maybe it's a</p> <p>21 number of hours or something along those lines.</p> <p>22 Sometimes there's product that literally nobody can</p> <p>23 access. All of the suppliers that have product in the system</p> <p>24 are on allocation at times like this; so it's possible that</p> <p>25 there's nothing that's actually accessible. Maybe there's some</p>

85-Octane Rules Hearing

<p style="text-align: center;">86</p> <p>1 formula at play there, but again, for 2011, most of September 2 of 2011 there wasn't gas available at the Magellan terminal in 3 Sioux Falls. Certainly more than four days. But maybe there's 4 a formula that those of us in the wholesale distribution 5 business aren't aware of. Because ultimately all that matters 6 to us is what we can access; so when trucks are driving out of 7 state, I assure you there would be no reason that we would ever 8 do that on the eastern side of the state because you would 9 never be paying less with the additional freight and so forth.</p> <p>10 So I just think that there's -- those numbers 11 absolutely do not match documented evidence to the contrary; so 12 if we could maybe get some clarification with that for the 13 public record, I think that would be helpful, just in the grand 14 scheme of things, not only on this issue, but also as it 15 relates to hours of service waivers, which have been absolutely 16 critical in keeping this state's retail gas locations flowing 17 with product over the last month. And we are very truthful 18 when we explain where there is product and where there is not 19 product; so I want that to be understood. But that's a side 20 issue somewhat.</p> <p>21 As for the issue we are here today, initially my 22 thoughts on this for our company were ban it outright, ban sub 23 octane product, and that was kind of the equivalent of an upset 24 voter saying throw the burns out. We had a tough period of time 25 where we felt sub octane product was being marketed as being</p>	<p style="text-align: center;">88</p> <p>1 matched up against them, you know, that's an issue of fairness 2 for sure. On our side of the state where we operate primarily 3 on the eastern side of the state, this is not a product that 4 has been traditionally marketed over there.</p> <p>5 So I think to some of the questions about there hasn't 6 been any complaints about issues with sub octane gasoline, 7 well, it's because it really hasn't ever been widely marketed 8 on the eastern side of the state. Whether it's been 9 distributed there, I cannot say; it's not something we partake 10 in. But it would be unfortunate if that were to grow, 11 particularly as Magellan said, that if they had requests to put 12 that into the system, into their pipelines, and it compromised 13 the already touchy accessibility of 87-octane, that's not a 14 good thing either.</p> <p>15 So our hope would be that if the state does allow sub 16 octane in certain parts of the state, that the Magellan and 17 Newstar systems feel absolutely no pressure to start supplying 18 it because I don't think there's going to be any demand for it. 19 Certainly the major brands like Shell, BP and so forth don't 20 support those products; so I just don't see that happening.</p> <p>21 I think, you know, if at the end of the day when we 22 weed through all of this, if the state decides that it's going 23 to be allowed, that this particular product is going to be 24 allowed east of Wall, or west of Wall, excuse me, then I think 25 the labeling shouldn't be an issue. There shouldn't be</p>
<p style="text-align: center;">87</p> <p>1 something other than what it is on the eastern side of the 2 state and that was frustrating to us. Throughout this process 3 we have learned a ton about how the Rocky Mountain refiners are 4 intent on having sub octane product available to the Rapid City 5 terminal, and for all the reasons that are associated with 6 that, the bottom line is we cannot have any further disruption 7 of supply to the state.</p> <p>8 So if that's the course that they are on and to deter 9 from that in any way, to send less supply to Rapid City, if 10 that actually happened, and of course Sinclair said they are 11 sending less, so that means that there are less available 12 gallons even though they are swapping around with others, we 13 are already seeing lesser gallons available there. If that got 14 any worse, everything that everybody has said and will say is 15 absolutely true. More trucks are going to come to the east and 16 the already diminished supply that we have is going to be 17 further tapped into. We just do not have the luxury in the 18 state of South Dakota to pick and choose which products are 19 available. That's unfortunate, but it's the way it is.</p> <p>20 So the question for me is where is this allowed and 21 how is it regulated? If the traditional boundary has been the 22 102nd meridian at Wall, that's obviously something the state 23 needs to consider. There's the issue of fairness to those 24 retailers that operate around that area, and when there is a 25 price savings with the sub octane gas and they are going to be</p>	<p style="text-align: center;">89</p> <p>1 labeling. If we go the way things have always kind of been, 2 that it was allowed to the west of Wall and not to the east, 3 then there really isn't any reason to change the way that that 4 product has been allowed over there. I don't think those folks 5 should be put at a disadvantage, if it's not going to be 6 allowed to the east.</p> <p>7 If it is allowed statewide, I do strongly believe that 8 there does need to be adequate labeling to properly warn 9 motorists of what it is that they are purchasing. And based on 10 what we heard from the auto dealers earlier today, there isn't 11 any car or truck being sold today that is advised to be running 12 anything less than 87-octane; so a label that says check your 13 owner's manual is nonsense because everybody's owner's manual 14 is going to say the same thing. It might say higher, it might 15 say use premium gasoline or whatever; so I just would caution 16 the state to not look at advising people to look at their 17 owner's manual. It should be a very clear warning about the 18 quality of this product that is not backed by any auto group, 19 if it's going to be allowed east of Wall.</p> <p>20 I guess in my mind that would be kind of a compromise, 21 is if it is allowed statewide, out of fairness or whatever 22 reason it is, you know, that there isn't labeling in the Hills 23 where this product has always been available and nobody can 24 point to any problems that have come of it, but if it is 25 allowed to the eastern two-thirds of the state, that whatever</p>

85-Octane Rules Hearing

<p style="text-align: right;">90</p> <p>1 labeling it is is extremely strong, and not only is it strong</p> <p>2 but that there is proper and regular enforcement and fines in</p> <p>3 place; so we don't run into any issues or any questions</p> <p>4 whatsoever about where can we do this, everybody knows exactly</p> <p>5 what it is the rules are, what the enforcement is going to be,</p> <p>6 what the penalty will be, and the consumer that ends up</p> <p>7 purchasing these products doesn't have any questions at all</p> <p>8 made available to them about what it is they are purchasing.</p> <p>9 If people choose not to read labels or whatever, you can only</p> <p>10 lead the horse to water.</p> <p>11 I think there's a compromise in here that works for</p> <p>12 the whole state, and if we accept the fact that South Dakota</p> <p>13 has very real supply issues, that in Sioux Falls today there</p> <p>14 was not gasoline at the early morning hours and we had trucks</p> <p>15 waiting to load, it's a real problem. And you got the fairness</p> <p>16 issues, you got consumer protection, you got protecting</p> <p>17 retailers, making sure that they know their competitor is</p> <p>18 selling the same thing that they are both marketing and</p> <p>19 advertising. I think all those issues, I think there's a</p> <p>20 workable solution to this problem.</p> <p>21 I just think this process has been very good for all</p> <p>22 of us to learn a little bit more about it and get some of these</p> <p>23 things out in the open so we can talk about it. So I thank you</p> <p>24 for that, and I had prepared comments that I tore up in my head</p> <p>25 about five seconds after I got here. If you have any</p>	<p style="text-align: right;">92</p> <p>1 equipment. But whenever humanly possible, we try to instead</p> <p>2 focus our energies on where product is going to be next in</p> <p>3 South Dakota or around Minnesota and attack that.</p> <p>4 MR. GLODT: When you travel out of state to source</p> <p>5 fuel, it obviously increases the cost of that product to the</p> <p>6 consumers. To put it in perspective, do you know, for example,</p> <p>7 how much more per gallon gas costs in Sioux Falls if you have</p> <p>8 to ship it from Minnesota or Omaha?</p> <p>9 MR. HOWES: If we are getting product out of</p> <p>10 Minneapolis, you are maybe going to pay another 15 cents; if</p> <p>11 you are getting it out of Omaha, maybe another 12 cents. Any</p> <p>12 time -- if we tap into additional carriers, you know, you are</p> <p>13 kind of subject to whatever additional charges they might</p> <p>14 choose to put on there. So if you are not only getting it from</p> <p>15 a few hundred miles away but the truck has to wait six hours to</p> <p>16 load or whatever, a lot of charges can add onto that. In that</p> <p>17 case you might see closer to 20 cents if you have got the</p> <p>18 nickel and dime stuff on there. It definitely is a real bite</p> <p>19 to the user.</p> <p>20 MR. GLODT: We will give Tom an opportunity to respond</p> <p>21 to your comments regarding the Magellan supply numbers. The</p> <p>22 comments that you made reflect our knowledge of the situation,</p> <p>23 more that Magellan does have supply issues. The last two times</p> <p>24 the Governor issued an hours of service exemption, I've got</p> <p>25 reports from July 9th that showed the Sioux Falls terminal from</p>
<p style="text-align: right;">91</p> <p>1 questions, I would be happy to attempt to tackle them.</p> <p>2 MR. GLODT: The good news is you still have 10 days</p> <p>3 after today to provide further written comment.</p> <p>4 MR. HOWES: I will have to go back.</p> <p>5 MR. GLODT: For some background, what region do you</p> <p>6 supply fuel to?</p> <p>7 MR. HOWES: We supply fuel statewide, but our base of</p> <p>8 operations is primarily Sioux Falls and then Mitchell and</p> <p>9 Aberdeen; so we don't operate any trucks nor have we ever out</p> <p>10 of the Rapid City area.</p> <p>11 MR. GLODT: How often do you have to travel outside of</p> <p>12 South Dakota to obtain fuel?</p> <p>13 MR. HOWES: Well, what's a little unique on the</p> <p>14 eastern side of the state versus the western side of the state</p> <p>15 is the closest available options to us typically don't have</p> <p>16 product either; so if it's the Rock Rapids Newstar terminal or</p> <p>17 the Milford Newstar or Magellan terminals or the Sioux City</p> <p>18 terminal or whatever it is, Marshall, Minnesota, typically when</p> <p>19 Sioux Falls is out, those are out as well. So our closest</p> <p>20 options end up being Minneapolis or Omaha, and those are far</p> <p>21 away.</p> <p>22 You can't get a lot accomplished, it's not a very</p> <p>23 efficient operation if you are sending trucks to those further</p> <p>24 destinations. So we will -- there is ways to be efficient</p> <p>25 using other carriers and being smart about how you utilize your</p>	<p style="text-align: right;">93</p> <p>1 Magellan did have fuel but it was allocated, they are low on</p> <p>2 diesel number two, but I do have a report that says they were</p> <p>3 out of unleaded in Watertown and then -- excuse me, that was</p> <p>4 the last hours of service exemption the Governor made. The</p> <p>5 first one, there have only been two that he's done, the first</p> <p>6 one was June 22nd and that report, I have Magellan Sioux Falls</p> <p>7 terminal running out on June 21st but that they did receive new</p> <p>8 supply the next day. Then I also have a report that says they</p> <p>9 were out of unleaded in Watertown and also out of diesel. But</p> <p>10 we will give Tom an opportunity to respond. First I guess if</p> <p>11 Jenna and Dave have any further questions of you.</p> <p>12 MR. HOWES: I'll elaborate on that real quick. You</p> <p>13 know, it's always our hope to get an hours of service waiver in</p> <p>14 place before absolutely everywhere is out of product because if</p> <p>15 it's just Sioux Falls Magellan that has sporadic or spotty</p> <p>16 supply of gas because of maybe only certain suppliers have it</p> <p>17 or whatever it is, it's still one of all of the other terminals</p> <p>18 on the eastern side of the state that might be out. So that</p> <p>19 hours of service waiver is so important because if a driver</p> <p>20 typically can roll in there and get in and out in less than an</p> <p>21 hour, and instead you are waiting two, three, four, five, six</p> <p>22 hours, all of those things can happen, then you can't get much</p> <p>23 accomplished if you are within the constraints of the usual</p> <p>24 hours of service. So even if it's not all the way out, we</p> <p>25 still need it so retail locations aren't going to run out of</p>

85-Octane Rules Hearing

<p style="text-align: right;">94</p> <p>1 product.</p> <p>2 MR. GLOTT: That's a good point you make because on</p> <p>3 those same days they were -- not all other terminals were out,</p> <p>4 there were two other terminals that had some fuel, although it</p> <p>5 was allocated, I know there's been very extremely long lines at</p> <p>6 some of those terminals that did have fuel. That's a good</p> <p>7 point.</p> <p>8 MS. HOWELL: I just wanted to follow up. You said</p> <p>9 that right now you support like a split, western South Dakota</p> <p>10 85 is okay, none in the east. Do you have any supply reason</p> <p>11 why you think Wall should be the cutoff? Do you think Wall</p> <p>12 should be the cutoff?</p> <p>13 MR. HOWES: I feel like it's arbitrary. I do feel</p> <p>14 like it's arbitrary. There's history there, you know, and</p> <p>15 again, in an attempt to find some sort of a compromise, I'm</p> <p>16 okay with that, but I do believe it's arbitrary and I do</p> <p>17 believe it's unfair for the folks that are right in that area.</p> <p>18 So if you are on one side of that and there's a price savings</p> <p>19 and then on the other side of it and you can't access that same</p> <p>20 low-cost product, obviously that's unfair.</p> <p>21 So you know, it's good that some of the rules that the</p> <p>22 state is relying on to set some of these laws are being</p> <p>23 reviewed because the altitude has always been kind of the</p> <p>24 understanding on that. And there's obviously not going to be a</p> <p>25 huge difference in altitude five miles either direction of</p>	<p style="text-align: right;">96</p> <p>1 the Black Hills area where those retailers are competing with</p> <p>2 the folks across the state line in Wyoming, you will always</p> <p>3 have a price advantage and you have tourists coming in from</p> <p>4 other areas or whatever. I mean, there really aren't any</p> <p>5 documented problems with those products in that area. So to</p> <p>6 have them be required to put a label when there really is no</p> <p>7 history of problems I just don't think is fair to those folks.</p> <p>8 If it were to be allowed statewide and the labeling began at</p> <p>9 Wall, I know it's easy for us to come up with some of these</p> <p>10 ideas for you, you have to follow them.</p> <p>11 MS. HOWELL: That's why we are here, we want ideas.</p> <p>12 MR. HOWES: Exactly, but I just throw it out there.</p> <p>13 For us the least palatable option would be for it to be allowed</p> <p>14 statewide without any protections in place for not only</p> <p>15 consumers but for my retail customers that are carrying true 87</p> <p>16 unleaded product or 89 octane product and the guy down the</p> <p>17 street is getting a lesser quality product and marketing it as</p> <p>18 being the same thing. Then for me as a wholesaler if you have</p> <p>19 people that are out there marketing something that's not the</p> <p>20 same as what you are offering. So I'm looking at it from that</p> <p>21 perspective, is there needs to be protections in place across</p> <p>22 the board on the eastern side of the state where this typically</p> <p>23 hasn't been an issue.</p> <p>24 I believe what the auto dealers say, too, is that</p> <p>25 there's a reason that they are saying 87-octane. They have got</p>
<p style="text-align: right;">95</p> <p>1 Wall, you know, so -- we could live with this being allowed</p> <p>2 statewide, but then it goes back to what wasn't happening</p> <p>3 before, which was very regular enforcement. And that's not a</p> <p>4 knock on the state, things change from administration to</p> <p>5 administration and I understand all that. We are looking at</p> <p>6 the future now. If it is allowed statewide, we would strongly</p> <p>7 believe that there needs to be proper enforcement, proper</p> <p>8 labeling and so forth.</p> <p>9 MS. HOWELL: I guess my question, like you said, the</p> <p>10 102nd meridian was kind of the traditional line because that's</p> <p>11 the dividing line between ASTM region one and ASTM region</p> <p>12 three, and I think there's been pretty general consensus at</p> <p>13 this point that that's an outdated standard, it's pre-'84</p> <p>14 carbureted engines to which that altitude section applies. So</p> <p>15 you are saying you don't mind if we just pick a line? Because</p> <p>16 there's been some concern, Pierre, we are right smack in the</p> <p>17 middle. It's just as far for us to get supply lines from Sioux</p> <p>18 Falls as it is from Rapid.</p> <p>19 MR. HOWES: Sure.</p> <p>20 MS. HOWELL: There's been, you know -- do you have a</p> <p>21 problem with where there's a line?</p> <p>22 MR. HOWES: I guess the attempt to find a compromise</p> <p>23 here on that to me comes down to the labeling because I do</p> <p>24 strongly believe that in the areas where 85-octane has not been</p> <p>25 the norm, that there should be proper labeling there. But in</p>	<p style="text-align: right;">97</p> <p>1 the engineering behind it and I don't think it's good for the</p> <p>2 state. I don't think it's good for our tourism industry for us</p> <p>3 to allow a lower quality product at the altitude or whatever</p> <p>4 you want to call it that most of the state is at. I just don't</p> <p>5 think that's good policy.</p> <p>6 MS. HOWELL: So two brief questions, then. Leaving</p> <p>7 aside the cautionary labeling issue, do you consider 85-octane</p> <p>8 to be a regular octane or a sub regular octane?</p> <p>9 MR. HOWES: Most certainly it's sub regular octane,</p> <p>10 yeah, not a regular.</p> <p>11 MS. HOWELL: And then to follow up on one of the other</p> <p>12 comments you made. I believe in the previous meeting we had</p> <p>13 you had brought up the issue of being undercut with the</p> <p>14 mislabeling that was alleged and investigated earlier this</p> <p>15 year. That was actually I believe part of the reason why</p> <p>16 emergency rules just went to everybody can sell it, we are not</p> <p>17 going to try and discriminate against people who live near</p> <p>18 Sioux Falls or people who live near Rapid. But based on your</p> <p>19 change of opinion on the subject, do you no longer feel that</p> <p>20 being undercut is a threat to you by competitors?</p> <p>21 MR. HOWES: It's still not a product that we are going</p> <p>22 to market. I don't think it's a quality product. I don't</p> <p>23 think it's -- for a lot of our branded accounts, it's not one</p> <p>24 that's supported by the brand who those folks have affiliated</p> <p>25 themselves with. It's not something that we plan on carrying</p>

85-Octane Rules Hearing

<p style="text-align: right;">98</p> <p>1 as a product or offering as a product. But the fact that</p> <p>2 it's -- the fact that it's now public knowledge that it's</p> <p>3 available statewide, there is no uncertainty about it at least.</p> <p>4 For the temporary amount of time that we have had to deal with</p> <p>5 this, it is what it is.</p> <p>6 And the other thing, too, that probably hasn't gotten</p> <p>7 near enough attention is that the sub octane product at the</p> <p>8 Rapid City terminal is only less expensive a portion of the</p> <p>9 year. It's not less expensive most of the year. It's really a</p> <p>10 short window of opportunity. So quite often product out west</p> <p>11 is higher priced; so some of the folks that have retail</p> <p>12 locations out there end up going over east because it's less</p> <p>13 expensive to get it from Mitchell or Wolsey or whatever it is.</p> <p>14 So it's not -- I think that's a misconception about this, that</p> <p>15 year round, day in and day out, that's a lesser-priced product.</p> <p>16 I think it's a lesser-quality product all the time, but it's</p> <p>17 not always a lesser-cost product.</p> <p>18 One other thing, too, I just have to say this, is</p> <p>19 there seems to be a big misunderstanding between gas and fuel.</p> <p>20 We typically -- South Dakota has a constant problem with diesel</p> <p>21 fuel. We are always running up against outages of that and we</p> <p>22 did, like last fall, we had outages for weeks at a time whereas</p> <p>23 with gasoline, the outages on the eastern side of the state are</p> <p>24 much more rare, but it seems like in this whole conversation,</p> <p>25 people have been using fuel as kind of the catch all phrase for</p>	<p style="text-align: right;">100</p> <p>1 quite often in the winter months where Rapid City product is</p> <p>2 going to be less expensive; so I'm trying to look to the future</p> <p>3 to the next time that happens so we can have some solutions in</p> <p>4 place at that point.</p> <p>5 MR. PFAHLER: We know who you are, but if you would,</p> <p>6 just spell your name and indicate who you represent for the</p> <p>7 record.</p> <p>8 MR. HOWES: It's Andy Howes, H-O-W-E-S, with Howes Oil</p> <p>9 Company in Sioux Falls.</p> <p>10 MR. PFAHLER: I do have a question. You indicated</p> <p>11 that you believe that 85-octane certainly is sub regular. You</p> <p>12 said you believe the auto manufacturers in terms of the issues</p> <p>13 that they have talked about today and yet in terms of the grand</p> <p>14 compromise, you think it would be fair to not label it say west</p> <p>15 of Wall but make sure it's labeled east of Wall. You don't see</p> <p>16 a fairness issue if you break it out at what you indicated was</p> <p>17 an imaginary demarcation line or whatever?</p> <p>18 MR. HOWES: Right, you can certainly argue that at</p> <p>19 face value it's certainly not logical, but just looking at the</p> <p>20 history of it, that would be what I would point to, is all of</p> <p>21 the folks that have extensive retail history in the Hills I</p> <p>22 don't think can point to any long history of motorists having</p> <p>23 problems.</p> <p>24 MR. PFAHLER: As a follow-up, you talked about if it</p> <p>25 was available statewide, that the labels would have to be very</p>
<p style="text-align: right;">99</p> <p>1 everything that's short. And I just think it's important to</p> <p>2 note that gasoline is out much less frequently than diesel fuel</p> <p>3 is, considerably less frequently on the eastern side of the</p> <p>4 state. Western side of the state, I can't speak to that with</p> <p>5 as much daily experience.</p> <p>6 MR. GLODT: In light of the comment about how the</p> <p>7 octane availability is really seasonal, post investigation of</p> <p>8 the mislabeling are you aware of any 85-octane being sold in</p> <p>9 any significant quantity east river?</p> <p>10 MR. HOWES: Well, post investigation it hasn't been</p> <p>11 advantageous to market it on the eastern side of the state.</p> <p>12 It's always been higher.</p> <p>13 MR. GLODT: That would be consistent with our</p> <p>14 findings, is 85-octane has not been sold in eastern South</p> <p>15 Dakota other than very few exceptions. We have an example in</p> <p>16 Highmore a couple weeks ago, which may have or did coincide</p> <p>17 when Aberdeen, Wolsey and Mitchell were all out of gasoline.</p> <p>18 And we see it in Pierre on a regular basis, but really you</p> <p>19 don't -- the further you get east of Pierre, it becomes much</p> <p>20 more unlikely that you would ever see it.</p> <p>21 MR. HOWES: That's why I guess I just think this whole</p> <p>22 process is so important going forward for the future, is it</p> <p>23 hasn't been an issue since this all came to light, but it will</p> <p>24 become an issue again at some point. There will be that period</p> <p>25 of time, and we never exactly know when it's going to be, but</p>	<p style="text-align: right;">101</p> <p>1 strong. Comparing those two options that you presented in</p> <p>2 terms of from Wall west no labeling there versus statewide</p> <p>3 availability but very strong labeling, what would your</p> <p>4 preference be?</p> <p>5 MR. HOWES: Well, if it were to be available</p> <p>6 statewide, I believe there should be strong labeling under any</p> <p>7 circumstance. I mean, that would be my first priority, is if</p> <p>8 it's available in Aberdeen, then I think there should be strong</p> <p>9 labeling, if that's the requirement for it, there also be</p> <p>10 labeling in the Black Hills, it is what it is. I just think</p> <p>11 that there's -- it sounds to me like, based on how the state</p> <p>12 has historically looked at this with some of these standards</p> <p>13 that are in place, that there would be the opportunity for some</p> <p>14 compromise on that.</p> <p>15 MR. PFAHLER: Thank you.</p> <p>16 MR. GLODT: Thank you very much, Andy. Any further</p> <p>17 comment?</p> <p>18 MR. HOWES: No, thank you, appreciate it.</p> <p>19 MR. GLODT: Tom, if you would like, you have the</p> <p>20 opportunity to make further comment in regard to the supply</p> <p>21 issue.</p> <p>22 MR. BYERS: I guess at this point I would just say two</p> <p>23 things. One, the information that I provided to you was for</p> <p>24 the Sioux Falls terminal and not for Watertown, and it</p> <p>25 certainly would make sense to me that because of the tiered</p>

85-Octane Rules Hearing

<p style="text-align: right;">102</p> <p>1 system we have in our terminals, that there would be times when</p> <p>2 Watertown could or would be out of product that Sioux Falls was</p> <p>3 not.</p> <p>4 The statistics that I presented to you were provided</p> <p>5 to me by Magellan's manager of transportation and logistics,</p> <p>6 who is the individual responsible for the schedulers and the</p> <p>7 others making sure that product gets where it gets in what</p> <p>8 amount. So I will simply have to go back and visit with him</p> <p>9 and see if there is an explanation as to why those statistics,</p> <p>10 which I believe are true, differ from the information Mr. Howes</p> <p>11 gave you, and I'll certainly do that as soon as I go back and</p> <p>12 we will follow up with you all.</p> <p>13 MR. GLODT: Thank you very much, and anything you can</p> <p>14 do to supplement the record, especially also including</p> <p>15 Watertown supply issues, the Watertown terminal.</p> <p>16 MR. BYERS: Okay.</p> <p>17 MR. GLODT: We have four more commenters on the list.</p> <p>18 We have James from Farmers Union, Ron Lamberty from ACE, Gary</p> <p>19 from Corn Growers, and Dawna Leitzke. Any volunteers?</p> <p>20 MR. WAHLE: My name is Jim Wahle, W-A-H-L-E, and thank</p> <p>21 you for the opportunity to present comments at this meeting.</p> <p>22 One of the reasons why we are here I think today is there was a</p> <p>23 whole bunch of mislabeling going on when the product was</p> <p>24 cheaper west river at that particular time, and I think Mr.</p> <p>25 Howes did a very good job explaining that issue.</p>	<p style="text-align: right;">104</p> <p>1 one of the issues that we fear is if you go to the western</p> <p>2 portion of the state, and we have no problem under current law,</p> <p>3 we support the current law with the division at Wall, the 102nd</p> <p>4 meridian I believe it's called, where 85-octane is available</p> <p>5 west of there, we do not have a problem with that. We need to</p> <p>6 supply those people out there with product. But if the</p> <p>7 terminals and the pipelines, the refineries and the pipelines</p> <p>8 are bringing in 85 product and 81-and-a-half product, one of</p> <p>9 our fears is 85 wasn't supposed to get east of the 102nd. If</p> <p>10 they -- a trucker pulls in and has four compartments and fills</p> <p>11 three with 85-octane and they are out, what's going to stop him</p> <p>12 from filling the fourth one with 81-and-a-half, blending it off</p> <p>13 and there you have another labeling issue? So we want to be</p> <p>14 very careful where we go here.</p> <p>15 In closing, we just think we should keep the current</p> <p>16 87-octane east of the 102nd where it's at, require equal</p> <p>17 labeling on all products, even if there was an issue in the</p> <p>18 Rapid City Journal where a store was selling 85-octane under an</p> <p>19 87 approximately two weeks ago; so we just think that that</p> <p>20 labeling issue is terribly critical. And with that, we think</p> <p>21 the state's weights and measures should have the availability,</p> <p>22 I heard on the radio on the way out here today where they</p> <p>23 received their first piece of equipment where they are going to</p> <p>24 be able to test, we think that's terribly important, and we</p> <p>25 think all the laws should be enforced as far as octane ratings</p>
<p style="text-align: right;">103</p> <p>1 We feel, from the Farmers Union standpoint, that</p> <p>2 mislabeling was a real issue and the wholesalers or suppliers,</p> <p>3 whatever term you want to use, didn't have equal access to that</p> <p>4 market; so a few people were cashing in. We didn't see any</p> <p>5 consumers benefit from a price perspective from a lower</p> <p>6 product -- from a lower-quality product than a higher-quality</p> <p>7 product and it was mislabeled besides. So we think that those</p> <p>8 companies did an illegal thing. The consumer was not protected</p> <p>9 in this whole deal and that's one of the issues we have as a</p> <p>10 Farmers Union, watching out for our members, is the quality of</p> <p>11 product that we were receiving, and so we feel that is a huge</p> <p>12 issue.</p> <p>13 In the past South Dakota Farmers Union worked with</p> <p>14 then Lieutenant Governor Dennis Daugaard on many E85 ethanol</p> <p>15 blended gasolines and for labeling and engine warranty, and we</p> <p>16 think we should adhere to the same standards for all products,</p> <p>17 whether it be ethanol, 87-octane or 85 as far as labeling</p> <p>18 issues are concerned, engine manufacturing warranties and so on</p> <p>19 and so forth. We just feel you should treat all products the</p> <p>20 same. If you pull up to an E85 pump, it will say flex fuel</p> <p>21 engines only. South Dakota Weights and Measures inspects those</p> <p>22 pumps to make sure they are dispensing correctly. We just feel</p> <p>23 that this is a huge consumer issue, especially to our patrons.</p> <p>24 Continuing on, there's been so many good comments</p> <p>25 throughout the day so I'll try to keep my remarks brief, but</p>	<p style="text-align: right;">105</p> <p>1 and the bill of ladings and stores and everything else. Thank</p> <p>2 you.</p> <p>3 MS. HOWELL: I just have one question. You said</p> <p>4 obviously the big concern is consumers' protection.</p> <p>5 MR. WAHLE: Correct.</p> <p>6 MS. HOWELL: I think everybody here acknowledges that</p> <p>7 is our primary concern as well. Do you think, since this issue</p> <p>8 has come to light, that that has been adequately addressed in</p> <p>9 the labeling, the investigations into mislabeling, which are</p> <p>10 now going to be an ongoing part of the weights and measures</p> <p>11 process, or do you think there's something more or less that</p> <p>12 needs to be done?</p> <p>13 MR. WAHLE: I think we need to continue on our current</p> <p>14 path, that the state weights and measures can check the octane,</p> <p>15 because two issues just come up recently, one was in Highmore I</p> <p>16 believe, I'm probably saying this wrong, the other one was in</p> <p>17 Rapid City, with labeling; so I think we need to continue on</p> <p>18 our current path.</p> <p>19 MS. HOWELL: Thank you.</p> <p>20 MR. PFAHLER: So if I understand correctly, you don't</p> <p>21 have a problem with the 85-octane being sold Wall west.</p> <p>22 MR. WAHLE: Correct.</p> <p>23 MR. PFAHLER: Do you --</p> <p>24 MR. WAHLE: As long as it's properly labeled.</p> <p>25 MR. PFAHLER: Labeled with the octane label</p>

85-Octane Rules Hearing

<p>106</p> <p>1 presumably.</p> <p>2 MR. WAHLE: Correct.</p> <p>3 MR. PFAHLER: But also with a label that indicates</p> <p>4 that they should refer to their owner's manual?</p> <p>5 MR. WAHLE: It's a sub standard grade; I would agree</p> <p>6 with that, they should refer to their owner's manual.</p> <p>7 MR. PFAHLER: Thank you.</p> <p>8 MR. GLOTT: I have no questions. Thank you very much.</p> <p>9 We will give Carla a break at this time. Let's take a</p> <p>10 five-minute break. We will try to start shortly after one here</p> <p>11 and we have three more people who are on the list to comment.</p> <p>12 If anybody else here would like to comment, please come sign on</p> <p>13 the list.</p> <p>14 (Whereupon, the hearing was in recess at 2:00 p.m.,</p> <p>15 and subsequently reconvened at 2:07 p.m., and the following</p> <p>16 proceedings were had and entered of record:)</p> <p>17 MR. DUFFY: My name is Gary Duffy, G-A-R-Y D-U-F-F-Y.</p> <p>18 I'm immediate past president of the South Dakota Corn Growers</p> <p>19 Association, representing them today. I come here today with</p> <p>20 concerns over the sale of 85-octane gasoline across the state</p> <p>21 of South Dakota. I understand 85-octane has been sold for</p> <p>22 years in the far western areas of the state, but recent</p> <p>23 mislabeling issues and far spreading sales of the low-grade</p> <p>24 fuel are indeed troubling.</p> <p>25 First and foremost, we believe consumers need to know</p>	<p>108</p> <p>1 biofuel right here in our state. As successful as ethanol has</p> <p>2 been, it continues to deal with its share of consumer</p> <p>3 perception issues that have been troublesome for the industry.</p> <p>4 Now as oil companies continue to blend 10 percent</p> <p>5 ethanol with 82-octane fuel to reach 85-octane blend, another</p> <p>6 entire set of negative connotations could emerge if consumers</p> <p>7 were to experience engine failure and associate the trouble</p> <p>8 with ethanol. Past history shows that ethanol has been the</p> <p>9 scapegoat used by some oil companies, some in the oil industry,</p> <p>10 some mechanics for problems that may not have anything to do</p> <p>11 with ethanol. You have got 90 percent of your tank that's</p> <p>12 filled with gasoline and if there's a problem, they say it's</p> <p>13 ethanol. How can that 10 percent cause so many problems,</p> <p>14 because nobody bothers to check the 90 percent that they are</p> <p>15 putting in there with it.</p> <p>16 Is supply really the issue? We have a partial</p> <p>17 solution to this problem in waiting with the Environmental</p> <p>18 Protection Agency's recent approval of E15, a blend of 15</p> <p>19 percent ethanol and 85 percent gasoline for cars and light</p> <p>20 trucks 2001 and newer. If implemented across the state, this</p> <p>21 blend could significantly lessen our dependence on low-octane</p> <p>22 fuel, providing a legal, higher-performing and cleaner-burning</p> <p>23 option to consumers, again, if we are truly faced with a</p> <p>24 gasoline shortage. I thank you for your time.</p> <p>25 MR. GLOTT: Thank you, Gary. Is your position that</p>
<p>107</p> <p>1 exactly what they are buying when they are choosing their fuel</p> <p>2 in South Dakota. Consumers need to be clearly informed about</p> <p>3 the products they are purchasing and consequences that could</p> <p>4 follow if they were to select low-octane fuel which may not be</p> <p>5 approved by their auto warranty or recommended by their</p> <p>6 manufacturer. 85 percent octane gasoline is illegal in South</p> <p>7 Dakota according to South Dakota law. Attempting to spin the</p> <p>8 fact that it has been used and mislabeled for years does</p> <p>9 nothing to benefit consumers but instead protects oil company</p> <p>10 interests. The sale of 85-octane fuel should occur only when</p> <p>11 there's a supply emergency and not become a regular option in</p> <p>12 South Dakota.</p> <p>13 To this I ask two questions. Is the current octane</p> <p>14 situation a matter of emergency or convenience for the state's</p> <p>15 gasoline suppliers? And is providing a lower-grade fuel</p> <p>16 perhaps more profitable for the suppliers? Please use caution</p> <p>17 moving forward, as allowing 85-octane as a regular blend could</p> <p>18 end up setting a dangerous precedent for not only South Dakota</p> <p>19 but consumers in other states as well.</p> <p>20 South Dakota should be proud that it produces an</p> <p>21 affordable and abundant alternative to illegal low-octane</p> <p>22 gasoline with corn ethanol. In fact our state produces around</p> <p>23 one billion gallons of the renewable fuel each year. Our</p> <p>24 farmers grow the corn, our working and technically educated</p> <p>25 workers produce the ethanol, and small businesses sell the</p>	<p>109</p> <p>1 85-octane fuel should be banned statewide?</p> <p>2 MR. DUFFY: As was discussed by the board, that is --</p> <p>3 I don't think that they ever discussed if there should be a</p> <p>4 line drawn; so at this point in time I would say yes, that's</p> <p>5 the position.</p> <p>6 MR. PFAHLER: I believe you said it should be banned,</p> <p>7 unless there is a supply emergency; is that even doable?</p> <p>8 MR. DUFFY: I guess I'm not quite following what your</p> <p>9 question is.</p> <p>10 MR. PFAHLER: My question is I think earlier you said</p> <p>11 that it should be banned, 85-octane should be banned unless</p> <p>12 there is a supply emergency. And I guess my question is</p> <p>13 logistically, maybe this isn't a question I should be asking</p> <p>14 you, but logistically, is that something that would work?</p> <p>15 There's an emergency, okay, they can start selling 85-octane.</p> <p>16 MR. DUFFY: Well, I guess my question is, and I've</p> <p>17 heard differing reports from -- we have had that people that</p> <p>18 spoke earlier, is it a true emergency situation where they</p> <p>19 cannot supply it or is it economic factors that are driving it</p> <p>20 so that they are making more money producing the 81-and-a-half</p> <p>21 versus the 84 or 85?</p> <p>22 MR. PFAHLER: Thank you.</p> <p>23 MS. HOWELL: I have a technical question harking back</p> <p>24 to a previous commenter as well. Can you explain to me, since</p> <p>25 you are the ethanol guy, how you can blend 10 percent ethanol</p>

85-Octane Rules Hearing

110

1 to get 81-and-a-half to 85? In your knowledge of the 10
 2 percent and all that, does that work?
 3 MR. DUFFY: We are getting into technical expertise,
 4 that's why I wanted to get Ron -- that's right up Ron's alley;
 5 so I'm going to defer that question to him.
 6 MS. HOWELL: Thank you.
 7 MR. GLODT: Sounds like there was discussion in regard
 8 to actual supply, whether or not that's a legitimate issue or
 9 not. Was there a discussion about the impact on price, on
 10 gasoline prices?
 11 MR. DUFFY: No, but I think what the biggest fear is
 12 is with the bleed over that was coming into the eastern part of
 13 the state and so now we are having the industry telling us what
 14 they can supply versus us telling the industry what we need.
 15 You have the automobile industry saying 87-octane, you start
 16 getting bleed over into the eastern part of the state, I think
 17 that's the thing that really tipped it over as far as getting
 18 everybody very concerned.
 19 MR. GLODT: Maybe it's something the board -- I guess
 20 there's 10 more days of comment period left. In regard to the
 21 supply issue west river, a pure ban, based on the comments we
 22 have heard today, would result in supply issues. Whether or
 23 not Corn Growers believes that's true or not is up to them, but
 24 we would welcome or encourage more comment after this period.
 25 MR. DUFFY: I will pass that message along to the exec

111

1 and to the board members and they will take it from there.
 2 MR. GLODT: I guess the point is if there is an
 3 acknowledgment that the supply issue at least for western South
 4 Dakota is legitimate, what the Corn Growers position would be
 5 to allowing the sale of 85 at least in certain parts of the
 6 state.
 7 MR. DUFFY: I would have to take that back and they
 8 would take it from there.
 9 MR. GLODT: Thank you very much for your time. Mr.
 10 Lamberty.
 11 MR. LAMBERTY: Good afternoon, my name is Ron
 12 Lamberty, R-O-N L-A-M-B-E-R-T-Y, and I'm the senior
 13 vice-president with the American Coalition for Ethanol. I'm
 14 here today to speak on behalf of the ethanol industry in the
 15 state of course; but also I'm a convenience store owner and I
 16 buy fuel.
 17 I think what we have seen here so far today is a
 18 couple of things. It's a rare occasion lately that I'm on the
 19 same side of an issue as the automakers, but the fact that
 20 there were people representing the National Auto -- the Auto
 21 Alliance and the other -- the two largest auto advocacy groups
 22 I think shows you that this issue is a lot bigger than just us.
 23 One of our concerns to start out with is that whatever
 24 we do here is going to set a precedent for the rest of the --
 25 could set a precedent for the rest of the country. You will

112

1 have implications beyond South Dakota.
 2 Another thing that we have heard today is that the oil
 3 companies are going to do what they have always done, and that
 4 is they are going to meet the requirements of the law that's
 5 set in the markets they are at. What we have heard is that
 6 where they used to make 85-octane gasoline and are now, within
 7 the last two years, required to use ethanol, it is not -- there
 8 is no requirement that they make a maximum of 85-octane fuel
 9 for that market.
 10 For example, in most of the midwest, we have
 11 traditionally essentially given away octane by selling an
 12 89-octane for less than 87 in most of the state of South
 13 Dakota, in Nebraska, Iowa, wherever that is. As Renewable Fuel
 14 Standard became law, the oil companies began making an
 15 84-octane fuel rather than just adding two octane -- adding
 16 ethanol to their 87 fuel because that was the most economical
 17 for them. The Renewable Fuel Standard is mute on octane. It
 18 says nothing about octane, and so the decision -- I mean, if
 19 octane doesn't make a difference economically, then there would
 20 be no reason to go from 85 to 83 or to 82 or to 81-and-a-half,
 21 which as I do the math, comes out to somewhere, with 10 percent
 22 ethanol, somewhere around 84.7, 84.8, depending on what you use
 23 for the numbers, which you could round up to 85, I suppose.
 24 If we are getting down to those half octane points,
 25 obviously there's a financial implication. That's fine, that's

113

1 what businesses are supposed to do, they are supposed to make
 2 as much money as they can within the rules. But what the
 3 government is supposed to do is make sure that the rules are
 4 set up so that the people who invest, in most cases at least
 5 the second highest dollar amount that they are spending on
 6 anything that they own, which is an automobile, that those
 7 people have a reasonable expectation that they can buy the fuel
 8 that's recommended for those vehicles.
 9 In this case 85-octane, as you have heard from the
 10 auto people today, is not recommended for any of those
 11 vehicles. Whether or not they have done -- I don't know why a
 12 car company would spend a lot of money to prove that they can't
 13 use a fuel that they don't want people to use. I assume they
 14 got to 87 somehow. And one of the things that -- one of the
 15 things you were hearing today, too, is something that concerns
 16 us in the ethanol industry. Our biggest advantage of ethanol
 17 is that we are an octane. We are inexpensive octane and so we
 18 are going to fight anything that will devalue that octane, and
 19 having 85 be the standard statewide would devalue octane.
 20 You heard the car makers talk about smaller engines
 21 that are going to need higher-octane fuels. If the base fuels
 22 aren't high enough, then right now some of the fuels they are
 23 talking about need a minimum of 84-octane in order to get to
 24 the place that they want to be to make these smaller
 25 turbocharged engines that will meet these greenhouse gas and

85-Octane Rules Hearing

114

1 cafe standard requirements. So there is, looking into the
2 future, more octane is where we need to be going; so policies
3 that encourage more octane would be what I believe we should
4 do. Plus the fact that we are an ethanol state; we make a
5 billion gallons of ethanol here. We should be encouraging
6 policies that give value to things we make in South Dakota.

7 I don't like this policy because it makes 85-octane
8 the rule rather than the exception. I believe we should have
9 some sort of well-defined standard, which it appears we don't
10 right now. The NIST handbook and ASTM appear to be at odds
11 about this. Even in discussing it on the side bar here, it
12 appears that the ASTM standard, as I read it, would allow
13 85-octane west of the 102nd meridian. That's what it appears
14 to me and that's probably -- certainly the oil companies must
15 believe that because that's what they have always supplied to
16 that area.

17 I'm encouraged to hear that they are looking at the
18 ASTM standard right now and whether or not that needs to be
19 changed to make it a minimum of 87-octane statewide or
20 nationwide. Yes, 102nd meridian appears to be arbitrary and
21 there are times when, because of the geography of our state, we
22 are a big state without a lot of people and because of that we
23 don't have a lot of terminals, where we are going to have times
24 that certain parts of the state are going to have to buy fuel
25 from different terminals. Naturally the best thing would be if

115

1 all those terminals carried the same fuel.

2 The alternative would be if the ASTM specification,
3 which was made by car manufacturers and oil companies and for
4 that matter ethanol people are on that board now, mechanics,
5 engineers, make those ASTM standards. If they don't like them
6 now, that's fine, they should go change them and that sounds
7 like what they are going to do. But it seems the most
8 defensible, regardless of the arbitrariness of the line, it
9 seems the most defensible to go by the standard that's been set
10 and agreed on by the people who may disagree now, and as
11 mentioned earlier, there may be some sort of epic struggle, but
12 if we use the ASTM standards in the state, then that means we
13 can do basically what we have done for the last 40 years.

14 Having, in this process, learned quite a bit more
15 about the supply situation, there are going to be times
16 obviously that we need to pull fuel from other areas right now,
17 and if 85-octane is to be used in a different area, then it
18 should be labeled that it's not a -- that it's not a fuel that
19 meets your -- that meets the requirements of your vehicle. I
20 think as Andy mentioned earlier, it's a little bit misleading
21 to say check your owner's manual because there's no owner's
22 manual that's going to say it's okay. So it does not meet
23 manufacturers requirements for octane would probably be more
24 accurate. Whether you require that in western South Dakota, I
25 don't know. I think if I had to go one way or the other, I'd

116

1 say you require it everywhere.

2 What we have learned through this whole process is we
3 need to have a solid standard because without that, it's hard
4 to enforce, and as an owner of a station, one of the things
5 that is particularly irritating to me is I don't know whether
6 over the last few years I've been competing against people who
7 have been selling a lower-quality product with the same label
8 on it that mine has. And so I need to be able to -- weights
9 and measures is supposed to be in charge of people making sure
10 that they don't put their thumb on the scale and they don't
11 measure a foot with an 11-inch ruler so that I'm competing
12 fairly with my neighbors, and if I'm not, those people need to
13 be punished in some way.

14 The last comment I'll make, then I'll open it up and
15 answer your questions or try to anyway, I also think the way
16 the regulation is right now, I think the fine is like \$1500.
17 That should be more in line with the amount of money we are
18 talking about when it's being done strictly to -- If we are
19 talking about something where 85-octane is being brought over
20 and sold as 87 where it's a clear violation, and nobody is
21 arguing that that should be allowed, that the fine should be
22 punitive enough that people don't consider doing it even when
23 the price gap between fuel you can get from the mountains and
24 fuel you can get in Sioux Falls is 45 or 50 cents. Those are
25 my comments.

117

1 MR. GLODT: Just to clarify, then, is it the position
2 of ACE that 85-octane should be allowed for sale west of the
3 102nd meridian but strictly prohibited east of the 102nd
4 meridian?

5 MR. LAMBERTY: The second half definitely. As far as
6 the first half, the ASTM specification is that, and I think
7 that's my reading of the ASTM specification. ACE policy would
8 probably lean more towards let's get the ASTM standard
9 straightened out so that the car makers have an idea, but until
10 they do, given the fact that there is the weight of the science
11 behind that, we would accept that as a legitimate reason that
12 there would be lower-octane fuel sold in those areas.

13 Also as Gary mentioned, too, one of our big issues is
14 this issue where nationally, for example, instead of starting
15 with 87 and making it 89, the refiners are making an 84 that's
16 blended up to 87 and the associated fallout that comes with
17 that possibly because of the base fuel is much lower octane,
18 but we would have less concern that that would happen in
19 regions where the fuel has been traditionally sold, where 85
20 has been the standard. We would have the phantom problems that
21 we have in some of these areas when they start labeling ethanol
22 where they never did before, and even though they have always
23 been selling it, now all of a sudden we have issues, in an area
24 that ASTM had determined it was all right to use de-rated
25 gasoline in the past, it would make sense that we would be less

85-Octane Rules Hearing

<p>118</p> <p>1 likely to have actual problems there as well.</p> <p>2 MR. GLODT: Then to follow up, because the position is</p> <p>3 supportive of the sale west of the 102nd, I also assume that</p> <p>4 ACE supports sale of 85-octane in the other Rocky Mountain</p> <p>5 states that are in regions, ASTM regions four and five.</p> <p>6 MR. LAMBERTY: Again, as long as that's the regulation</p> <p>7 that's being followed, yes. The interesting thing, some people</p> <p>8 have asked me, in this case two years ago the Rocky Mountains,</p> <p>9 they weren't selling much of any ethanol, and so this is a</p> <p>10 good -- this is a good new market for the ethanol industry. At</p> <p>11 the same time, that's where that fuel, that's where that fuel</p> <p>12 should be sold, that's what it's designed for, that's where it</p> <p>13 should be sold. When it starts bleeding over into other areas,</p> <p>14 then we have the issues where, as you have heard from again,</p> <p>15 whether it's the pipeline or whether it's other suppliers, if</p> <p>16 85 is in the pipeline, even if we require 87 to be available,</p> <p>17 one of my concerns would be will they make it so unattractive.</p> <p>18 We are hearing right now that the fuel that was made,</p> <p>19 the 85-octane fuel that's been in the marketplace for decades</p> <p>20 is now considered a boutique fuel that would lost a lot more</p> <p>21 because now they have gone to making a lower-octane fuel and</p> <p>22 adding ethanol to it. There is no reason to believe that if 85</p> <p>23 were available statewide, that in order to compete with that</p> <p>24 fuel, that the same product wouldn't be made available in</p> <p>25 eastern South Dakota, and there is nothing that we could do if</p>	<p>120</p> <p>1 other part of the state down to 85.</p> <p>2 MR. GLODT: That's certainly one of the arguments, the</p> <p>3 other argument being the elevation really isn't a factor any</p> <p>4 more in regards to engine damage. It really is based more on</p> <p>5 pure octane level and newer engines post 1984 have antiknock</p> <p>6 sensors that prevent damage being caused by the knocking that</p> <p>7 would result from a lower-octane fuel. Fortunately, the ASTM</p> <p>8 will be studying that issue specifically because the auto</p> <p>9 manufacturers were unable to provide us with documentation of</p> <p>10 engine damage and. . .</p> <p>11 MR. LAMBERTY: And I think the other thing we had was</p> <p>12 there have been no complaints. We haven't had any complaints</p> <p>13 about E30 either, but it's still only legal to use in flex fuel</p> <p>14 vehicles. The question I would ask when someone says we</p> <p>15 haven't had any complaints, I would say compared to what,</p> <p>16 because if all you have ever used is 85-octane, how do you know</p> <p>17 87 doesn't work better, how do you know 89 doesn't work any</p> <p>18 better? Do you know if a vehicle that would have gotten</p> <p>19 250,000 miles will only get 230,000?</p> <p>20 I guess I would rely more on the opinions of again the</p> <p>21 ASTM, which has folks from all different areas arguing with one</p> <p>22 another, and if they come back and say yep, 85 is enough and</p> <p>23 that's what we will do, then I guess we would go with that</p> <p>24 because the ethanol is going to have a seat at the table. But</p> <p>25 I suspect what they are going to say is 87 and higher is what</p>
<p>119</p> <p>1 if the decision was we are going to sell our 85-octane here and</p> <p>2 we will just make the price of 87-octane or 85 that you add</p> <p>3 ethanol to, we will make that so high that nobody will buy it</p> <p>4 and then the de facto fuel in the marketplace becomes 85.</p> <p>5 The state needs to have control over what the -- over</p> <p>6 what the minimum standards are and the companies that do</p> <p>7 business in the state need to meet those minimum standards, and</p> <p>8 it's for the protection of everybody who lives here and all the</p> <p>9 investments people have in equipment, vehicles, and anything</p> <p>10 else they buy that's going to use gasoline or any other</p> <p>11 product.</p> <p>12 MR. GLODT: The ASTM allowance for a two-point</p> <p>13 deviance for the 102nd, which is region three in South Dakota,</p> <p>14 is really based on standards for carbureted engines pre-1984.</p> <p>15 93 percent of the highway vehicles registered in the state of</p> <p>16 South Dakota are manufactured after 1984. Is it fair to say</p> <p>17 that that line on the 102nd or support for the line drawn at</p> <p>18 the 102nd is really based more on market share than science</p> <p>19 now?</p> <p>20 MR. LAMBERTY: I think it's based on geography. It's</p> <p>21 a line that you can draw, but as far as science goes, if we are</p> <p>22 going to move that direction, then if this was written with '84</p> <p>23 cars in mind, then read a little further in that standard where</p> <p>24 it says the justification for de-rating no longer exists, which</p> <p>25 would lead us to say that we should be at 87 and not bring the</p>	<p>121</p> <p>1 we need because of other goals we have with the fuel, other</p> <p>2 things that we need to do with fuel in the country so we have a</p> <p>3 cleaner, higher-octane fuel, we can run smaller engines, higher</p> <p>4 compression, get better mileage and ultimately use more fuel</p> <p>5 that we make here in South Dakota. And until we start refining</p> <p>6 oil or finding oil in the state, I think we need to lean more</p> <p>7 in that direction and protecting the industry that's pretty</p> <p>8 vital to our state.</p> <p>9 MR. GLODT: Any other questions?</p> <p>10 MS. HOWELL: You obviously anticipated my question on</p> <p>11 81.5 and 85 and you said you think it would be an 84.7 or an</p> <p>12 84.8. To clarify, in your professional opinion, then, if an</p> <p>13 81.5 octane is shipped to Rapid City, they blend it with the 10</p> <p>14 percent that's allowed without a flex fuel or the standard, it</p> <p>15 would then be mislabeling for that to be sold as 85-octane?</p> <p>16 MR. LAMBERTY: If they send what, an 81-and-a-half?</p> <p>17 MS. HOWELL: Yeah.</p> <p>18 MR. LAMBERTY: No, because I think the labeling rules,</p> <p>19 if anybody -- I think the labeling rules allow you to round up</p> <p>20 to the next highest number.</p> <p>21 MR. PFAHLER: You can't round up. You can't round up.</p> <p>22 MS. HOWELL: That was my understanding of our current</p> <p>23 statute.</p> <p>24 MR. LAMBERTY: Then their base fuel must be a little</p> <p>25 higher than 81-and-a-half or the ethanol must be a little</p>

85-Octane Rules Hearing

<p>122</p> <p>1 higher. I was under the understanding you could round up.</p> <p>2 MR. PFAHLER: I don't believe so, no.</p> <p>3 MS. HOWELL: I just also wanted to clarify, I</p> <p>4 certainly appreciate your comments on the fines, but I wanted</p> <p>5 to clarify that the fines and the penalties for mislabeling are</p> <p>6 set by statute; so that's not something we can address in the</p> <p>7 rules process, just to clarify.</p> <p>8 MR. LAMBERTY: Okay.</p> <p>9 MS. HOWELL: Thank you.</p> <p>10 MR. GLODT: Are you aware of 85-octane being sold</p> <p>11 anywhere in the eastern part of the state since April?</p> <p>12 MR. LAMBERTY: No, I'm not. And I think probably --</p> <p>13 obviously the labeling helped somewhat. I think probably the</p> <p>14 attention that it got in the media was probably as helpful from</p> <p>15 a consumer standpoint as anything else, but no, I'm not aware</p> <p>16 of that right now. Again, this is traditionally something that</p> <p>17 happens in the winter and into the spring, and the advantages</p> <p>18 have been different this year than they have been in other</p> <p>19 years, making it a lot more attractive.</p> <p>20 It's the first time I have ever had somebody -- my</p> <p>21 station is branded BP, supplied by Harms Oil, and I have had</p> <p>22 somebody that was a competitor come to me and say, I can sell</p> <p>23 you gas for 10 cents less than the rack price in Sioux Falls.</p> <p>24 At the time I didn't know what he was talking about, this was</p> <p>25 this winter. Obviously they were talking about bringing stuff</p>	<p>124</p> <p>1 that wouldn't have met the specifications, that wasn't a supply</p> <p>2 issue. I think that's probably what -- people have more</p> <p>3 problem with that than they do with the other, with the other</p> <p>4 scenario where, again, people who live where they have sold</p> <p>5 85-octane all along or where they have sold it sporadically</p> <p>6 probably don't have as much of an issue. It would be nice to</p> <p>7 know if they knew. I think now that they know, it will become</p> <p>8 more of an issue, and in the ethanol industry we have certainly</p> <p>9 been labeled to death in a lot of different ways. I fully</p> <p>10 support someone else getting that same treatment.</p> <p>11 MR. PFAHLER: No questions.</p> <p>12 MR. GLODT: Thank you, Ron, very much for your time</p> <p>13 and expertise.</p> <p>14 MR. GLODT: Dawna. Is there anybody else that plans</p> <p>15 to make comment? Anyone else? Looks like Dawna will be last.</p> <p>16 MS. LEITZKE: Good afternoon, everybody. My name is</p> <p>17 Dawna Leitzke, D-A-W-N-A L-E-I-T-Z-K-E, and I'm the executive</p> <p>18 director for the South Dakota Petroleum and Propane Marketers</p> <p>19 Association today. And I think to start out my comments, I</p> <p>20 think we have got some good input today. I was pleased to hear</p> <p>21 the input from the pipeline and the refiners and everybody else</p> <p>22 in the group.</p> <p>23 We, the South Dakota Petroleum Marketers -- South</p> <p>24 Dakota Petroleum and Propane Marketers Association, urge the</p> <p>25 state of South Dakota to adopt rules that would allow the</p>
<p>123</p> <p>1 over from the other side of the state that definitely wouldn't</p> <p>2 comply with my BP contract but also probably wouldn't comply</p> <p>3 with those other things.</p> <p>4 I was happy that it was brought up that a lot of what</p> <p>5 we are discussing -- we got two issues, we have got supply</p> <p>6 issues, and then we have got other issues where fuel that</p> <p>7 wasn't supposed to be sold in the eastern side of the state was</p> <p>8 sold for financial reasons. I think supply issues are things</p> <p>9 that we have to make arrangements for, and as far as someone</p> <p>10 bringing a noncompliant fuel into an area, I think that's</p> <p>11 something that we have to make sure that we guard against and</p> <p>12 punish when it happens.</p> <p>13 MR. GLODT: Do you believe the supply shortages that</p> <p>14 have been mentioned for eastern or western South Dakota are</p> <p>15 exaggerated in any way?</p> <p>16 MR. LAMBERTY: Well, exaggerated in any way? Yes, but</p> <p>17 not -- they are real, they are real. I just don't believe that</p> <p>18 they are the reason -- I don't think we should change the</p> <p>19 regulations for the worst case scenario. You make emergency or</p> <p>20 exceptions for the worst case scenario and you make the</p> <p>21 regulations for what usually happens. So yeah, they happen.</p> <p>22 I was glad to hear somebody mention that most of them</p> <p>23 have been diesel fuel, but I can tell you again, I wasn't</p> <p>24 running out of fuel, I didn't have any problem getting fuel.</p> <p>25 When someone came to my store and tried to sell me some fuel</p>	<p>125</p> <p>1 refiners in the Rocky Mountain region to continue to supply the</p> <p>2 Rapid City pipeline. This can be accomplished by writing</p> <p>3 administrative rules that are consistent with rules from any of</p> <p>4 the states in the Rocky Mountain region such as Colorado,</p> <p>5 Wyoming, Montana, Utah or Idaho and that don't require</p> <p>6 derogatory labeling on gasoline pumps.</p> <p>7 If the South Dakota rules are more stringent than</p> <p>8 other Rocky Mountain states that these refiners presently</p> <p>9 produce gasoline for and require those derogatory labeling on</p> <p>10 the pumps, the refiners' ability or willingness to continue</p> <p>11 supplying western South Dakota could be jeopardized. This</p> <p>12 could result in major supply interruptions, potential price</p> <p>13 spikes, and could result in a loss of up to 70 percent of the</p> <p>14 gasoline supplied that presently is available in western South</p> <p>15 Dakota.</p> <p>16 We would urge you to carefully consider these rules to</p> <p>17 insure that refiners can continue to provide the citizens of</p> <p>18 South Dakota with a high-quality gasoline at a reasonable price</p> <p>19 that has been enjoyed for the past 30 plus years in western</p> <p>20 South Dakota. And I would stand by for any questions.</p> <p>21 MR. GLODT: There have been a lot of comments in</p> <p>22 regards to whether or not the supply challenges in South Dakota</p> <p>23 are real. Would you care to comment on whether or not we truly</p> <p>24 have gasoline or fuel shortages in South Dakota?</p> <p>25 MS. LEITZKE: I can assure you that the supply</p>

85-Octane Rules Hearing

<p style="text-align: right;">126</p> <p>1 challenges and shortages are real in the state of South Dakota.</p> <p>2 I take it very seriously when I ask the Governor's office for</p> <p>3 the state of South Dakota for an hours of service waiver on</p> <p>4 those. I think sometimes it gets confusing if that supply</p> <p>5 issue is real or not when you hear people say my gas station</p> <p>6 didn't run out of fuel or no one visibly sees in the state of</p> <p>7 South Dakota that gas stations aren't out of South Dakota</p> <p>8 (sic). I can tell you that the fuel wholesalers in the state</p> <p>9 work very hard and go to long lengths and long distances to</p> <p>10 insure that gas stations are not out of fuel.</p> <p>11 I also can assure you that when we started this</p> <p>12 gasoline shortage, which is how it started in June of this</p> <p>13 year, there was times when drivers were sitting four to five</p> <p>14 hours at the pipeline. Now, there might have been physical</p> <p>15 barrels in that pipeline, but hours of service waivers and</p> <p>16 shortages are needed for when those drivers sit in their truck</p> <p>17 and wait. They don't get suspended from the hours of service</p> <p>18 by waiting in line, which is what they do a majority of the</p> <p>19 time. Without those hours of service waivers and the shortages</p> <p>20 that we do experience, that's what causes outages at gas</p> <p>21 stations in this state. So yes, those are real outages, and</p> <p>22 every time I come to the Governor for an hours of service,</p> <p>23 those are real outages in the state of South Dakota.</p> <p>24 MR. GLODT: Do you have any information that would</p> <p>25 illustrate the impact of price for a gallon of gas for the</p>	<p style="text-align: right;">128</p> <p>1 challenge that anybody in eastern South Dakota, and I don't</p> <p>2 like to draw a line or delineate at Pierre, that anybody in</p> <p>3 eastern South Dakota could be faced with the challenge that if</p> <p>4 85-octane is not legal east of the 102nd meridian, that they</p> <p>5 could potentially have a supply issue. We feel that that could</p> <p>6 be addressed through an executive order from the Governor, such</p> <p>7 as he does with the hours of service, to help with that</p> <p>8 situation in those cases.</p> <p>9 MR. GLODT: How about the impact to cost for gasoline</p> <p>10 for the consumer from Wall to Pierre, if 85-octane were banned</p> <p>11 east of the 102nd meridian?</p> <p>12 MS. LEITZKE: Because I'm not a retailer, I can't talk</p> <p>13 about price of a retail gallon of gasoline. What I do know is</p> <p>14 that the line that has been drawn, the 102nd meridian we are</p> <p>15 all debating today, was based on science and a standard that</p> <p>16 was put forth by ASTM. That line has been in place, we can</p> <p>17 debate if it's 30, 40 or 50 years, but that's always been in</p> <p>18 place. And that's how supply issues historically have</p> <p>19 happened, Rapid City pipeline feeds the west, the rest of the</p> <p>20 pipelines feed the east.</p> <p>21 MR. GLODT: Is it fair to say that if the line, the</p> <p>22 102nd meridian is the line, if Midland and Philip and Murdo are</p> <p>23 sourcing fuel from the east, that their fuel prices would be</p> <p>24 upwards of 20 to 30 cents per gallon higher than Wall west?</p> <p>25 MS. LEITZKE: That would be pure speculation on my</p>
<p style="text-align: right;">127</p> <p>1 consumer based on cost for transportation of gasoline or fuel</p> <p>2 from outside of the state?</p> <p>3 MS. LEITZKE: That is not an area of my expertise. A</p> <p>4 fuel wholesaler, and I think Andy Howes actually did a good job</p> <p>5 of actually addressing that issue. Obviously, the farther you</p> <p>6 drive to get fuel, the more freight you put on that truck and</p> <p>7 consequently, that would affect the price that they post at</p> <p>8 retail.</p> <p>9 MR. GLODT: Maybe I missed it, but what is -- is the</p> <p>10 association's position that 85-octane should be allowed for</p> <p>11 sale west of the 102nd meridian with no label?</p> <p>12 MS. LEITZKE: Our position remains the same on that,</p> <p>13 yes.</p> <p>14 MR. GLODT: And that east of the 102nd be banned?</p> <p>15 MS. LEITZKE: That is correct.</p> <p>16 MR. GLODT: Are there any concerns, if that is the</p> <p>17 policy in regards to the supply challenges, that retail gas</p> <p>18 stations from Wall to basically Pierre, the impact that that</p> <p>19 would have on them, the impact of supply for those gas stations</p> <p>20 from Wall to Pierre, if 85-octane were banned?</p> <p>21 MS. LEITZKE: I'm hoping I am understanding your</p> <p>22 question correctly, but I think on any given day, we have</p> <p>23 supply challenges in the state of South Dakota for a couple</p> <p>24 reasons, the biggest being where we enter the pipeline; so we</p> <p>25 are the last to get fuel or gasoline at this pipeline. The</p>	<p style="text-align: right;">129</p> <p>1 part. I think one of the previous speakers, and I think it was</p> <p>2 Monica that talked about -- It wasn't Monica -- someone talked</p> <p>3 about -- it was Tom Taylor, he talked about how -- when I</p> <p>4 started my job about 18 years ago, retailers used to talk about</p> <p>5 how they go to the pipeline and it was a quarter of a cent</p> <p>6 different from day to day because price fluctuates that much.</p> <p>7 Today you see spikes to 10 and 20 cents a gallon.</p> <p>8 So I can't answer that question specifically, that</p> <p>9 would be based on a lot of different factors, the brand you</p> <p>10 carry, the freight that you charge, do you own your own</p> <p>11 transport, do you pay for freight through that way. There's</p> <p>12 just 100 different factors and you would have to have a</p> <p>13 retailer answer that question.</p> <p>14 MR. GLODT: I suppose if it is a legitimate issue of</p> <p>15 concern, that we will receive comment most likely from retail</p> <p>16 gas stations in that region from Wall to Pierre.</p> <p>17 MS. LEITZKE: That would be my assumption.</p> <p>18 MR. PFAHLER: Dawna, do you think it is derogatory to</p> <p>19 have a label suggesting that the purchaser refer to their</p> <p>20 owner's manual for the proper octane?</p> <p>21 MS. LEITZKE: I believe that any type of a warning</p> <p>22 label on a gasoline product is going to raise a red flag and</p> <p>23 alarm someone, that says, wow, I might be getting a horrible</p> <p>24 product that could somehow damage my car. In addition to that,</p> <p>25 I think that we can accomplish the so-called warning label by</p>

85-Octane Rules Hearing

<p style="text-align: right;">130</p> <p>1 simply putting an octane label on the pump.</p> <p>2 Actually, I pulled some information from the state of</p> <p>3 Oregon and I thought -- It's called Get to Know the Facts About</p> <p>4 Gas and Octane, and I thought that this question has been asked</p> <p>5 many times today and I liked what they put as an answer. It</p> <p>6 says, "The octane rating for gasoline labeled as premium or</p> <p>7 regular is not consistent across the country. To insure you</p> <p>8 know what rating you are buying, look at the yellow octane</p> <p>9 sticker on the gas pump instead of relying on the name." And I</p> <p>10 really like that language because I think when you look at that</p> <p>11 octane rating, it is clear what you are getting. It is clear</p> <p>12 that I'm getting 85 or 87 or 91 or whatever you are getting,</p> <p>13 it's clearly marked with an octane label that is yellow.</p> <p>14 MR. PFAHLER: Is it clear to the public that that</p> <p>15 octane may not be recommended for the vehicle they are driving?</p> <p>16 It's clear to them what octane it is, if it's properly labeled,</p> <p>17 but is it clear to them that it may not be a recommended fuel</p> <p>18 for their vehicle?</p> <p>19 MS. LEITZKE: I guess that would depend on if they</p> <p>20 read their owner's manual or not, which I have never read my</p> <p>21 owner's manual.</p> <p>22 MR. PFAHLER: I guess my last question is this. A lot</p> <p>23 of people suggested there have been no documented problems with</p> <p>24 engine damage and so on and so forth, but I can tell you from</p> <p>25 my standpoint, I'm already receiving some public comment</p>	<p style="text-align: right;">132</p> <p>1 period where we could come up with something that is palatable</p> <p>2 for both marketers and the state of South Dakota that would</p> <p>3 accomplish both of our objectives, not to make people feel like</p> <p>4 they are getting a fuel that's going to damage their engine,</p> <p>5 and I'm going to refer back to this again. All of these areas</p> <p>6 sell that same fuel that's been historically sold in Rapid</p> <p>7 City, South Dakota, and none of those states carry a warning</p> <p>8 label such as that. They simply carry an octane label.</p> <p>9 So I guess a long way to answer your question is maybe</p> <p>10 check with these states and see if their agencies such as yours</p> <p>11 have ever had that question addressed or how they address that,</p> <p>12 too. In my comments, I'm going to go back to them for a</p> <p>13 second, I think that some of those states, and I have looked at</p> <p>14 Montana's and how they address this issue in their state, I</p> <p>15 think by using their language, we could probably accomplish a</p> <p>16 reasonable solution that would be good for everybody.</p> <p>17 MR. PFAHLER: One last question. That is we have</p> <p>18 heard today that ASTM and National Conference for Weights and</p> <p>19 Measures are going forward with proposals at this point to set</p> <p>20 a minimum octane for ASTM. I believe this is the first time</p> <p>21 ever in history that they have attempted to do that. Whether</p> <p>22 they do or not, how long it takes, I guess we don't know. But</p> <p>23 my point is that if that happens, wouldn't that ease some of</p> <p>24 the problems that we have and would the petroleum and propane</p> <p>25 marketers be supportive of it?</p>
<p style="text-align: right;">131</p> <p>1 suggesting -- they are not suggesting that there was damage to</p> <p>2 their engines, et cetera, but if you say that you don't want</p> <p>3 any additional labeling other than 85 for a fuel that is not</p> <p>4 recommended for 96 percent of the vehicles, 93?</p> <p>5 MR. GLODT: At least 93.</p> <p>6 MR. PFAHLER: 93 percent of the vehicles in South</p> <p>7 Dakota today, are the marketers, do the marketers have any</p> <p>8 concerns at all about liability in the future, people coming to</p> <p>9 them and saying you wouldn't -- you didn't warn me that this</p> <p>10 wasn't recommended for my vehicle, are you worried about</p> <p>11 liability?</p> <p>12 MS. LEITZKE: I guess we haven't discussed that</p> <p>13 specific issue, but Dave, I would point out, that's why I</p> <p>14 pulled this map closer to me, I would point out that in all of</p> <p>15 these metropolitan areas, Denver, Cheyenne, Salt Lake City,</p> <p>16 Billings, Bozeman, Boise, Idaho, Missoula, Great Falls, all of</p> <p>17 these people use 85-octane. They don't have any warning label</p> <p>18 on their octane label, and I do understand that some of those,</p> <p>19 not Montana, but some of those are in a different ASTM region</p> <p>20 than us, but the fact remains that six states also have</p> <p>21 85-octane and there's other states in the nation that allow</p> <p>22 85-octane. They do not carry a warning label.</p> <p>23 I guess my biggest fear about the warning label is our</p> <p>24 second largest industry in the state, which is tourism, I think</p> <p>25 that together we could have a discussion in this next two weeks</p>	<p style="text-align: right;">133</p> <p>1 MS. LEITZKE: Absolutely. I think that when I think</p> <p>2 about -- I don't know if it's been mentioned today, but there's</p> <p>3 52 different boutique fuels in the United States. That's a lot</p> <p>4 of fuel to refine for specific parts of the country, and if the</p> <p>5 nation could come together and we could have one gasoline, that</p> <p>6 would solve a lot of issues for everybody. So we would be in</p> <p>7 support of that.</p> <p>8 MR. PFAHLER: Thank you.</p> <p>9 MR. GLODT: It may be too soon to ask this question,</p> <p>10 but I know obviously the petroleum industry does not like the</p> <p>11 cautionary labeling, we have heard a lot about that and</p> <p>12 understand that position. But now that the labels have been</p> <p>13 required for a couple weeks, have you heard from your retailers</p> <p>14 in regards to the impact that is having on consumer behavior?</p> <p>15 MS. LEITZKE: I have not heard that from my retailers</p> <p>16 at all. The only thing I could refer to is the article that</p> <p>17 was in the Rapid City Journal where they polled people and</p> <p>18 asked those people -- I'm not going to get this 100 percent</p> <p>19 correct -- It was something to the effect of if there was a</p> <p>20 warning label on 85-octane, would you buy it, and the number</p> <p>21 that stuck with me was out of around 600 people, 117 people</p> <p>22 said no, I would not buy it.</p> <p>23 That makes me nervous, that worries me with our</p> <p>24 already stressed supply issue and the potential of refiners not</p> <p>25 being able to supply our western part of South Dakota, that</p>

85-Octane Rules Hearing

<p style="text-align: right;">134</p> <p>1 makes me nervous, that anything that is done that would lose us 2 one wet barrel in the state is not a good thing.</p> <p>3 MR. GLODT: As we go through the rules, the permanent 4 rules making process, will you be able to provide us with data 5 that shows volume of 85-octane sold before usage of the labels 6 compared to volume of 85-octane sold after usage of the labels?</p> <p>7 MS. LEITZKE: I will work with you to try to find that 8 information through various sources.</p> <p>9 MR. GLODT: In regard to where 85-octane is being 10 sold, although technically legal with passage of the emergency 11 rules, are you aware of any 85-octane being sold east of the 12 river in any significant quantities since April?</p> <p>13 MS. LEITZKE: I am aware of zero gallons of 85-octane 14 going east of the 102nd meridian.</p> <p>15 MR. GLODT: So really the market has pushed it back to 16 the 102nd. I think we have a couple examples of Highmore a few 17 weeks ago that we are aware of and then in Pierre, but other 18 than that, we are not aware of anyone else.</p> <p>19 MS. LEITZKE: No, I'm not aware of any.</p> <p>20 MS. HOWELL: I just kind of want to follow up with 21 your argument that the octane label is sufficient, and I have 22 kind of a couple questions related to that. When the Office of 23 Weights and Measures tests a pump and now as we are beginning 24 to test octane, we seal it and that is meant for the consumers 25 to understand that we at the state are certifying that this is</p>	<p style="text-align: right;">136</p> <p>1 a complaint, you heard the auto guy say, both the auto 2 manufacturing people say that they never heard of anybody 3 having engine trouble because of octane. So I'm going to fall 4 back on history here. We have never had any issues with that.</p> <p>5 I think by putting a warning label on now, you throw 6 up a red flag inadvertently and you panic people. We are a 7 week from the Sturgis rally. With warning labels on those, 8 that also makes me a little nervous, a place we have 9 historically never had that and have always sold 85 and have 10 labeled it 85 there and everybody knew what fuel they were 11 getting. I have purchased 85-octane in the Hills and never had 12 any issues. But I think because history shows we have never 13 had issues, I don't see anything going forward that should 14 change in that market.</p> <p>15 MS. HOWELL: I don't mean to belabor the point, but 16 again, one of the reasons I think we went into the discussions 17 of our emergency rules is the state's preference that we allow 18 the market to work, and if I remember high school economics 19 correctly, the market presupposes perfect knowledge, and do you 20 think that simply by putting an 85-octane sticker on a pump, 21 there is enough knowledge in the consumer side of things to 22 allow the market to work properly?</p> <p>23 MS. LEITZKE: I do.</p> <p>24 MS. HOWELL: And so then following up on that, I think 25 everybody is pretty clear that we are here because octane was</p>
<p style="text-align: right;">135</p> <p>1 within legal tolerances. And do you not see a concern if we 2 are labeling -- if we are sealing an 85-octane pump as being 3 correct, being the correct octane without notifying customers 4 that that is not a recommended octane for 93 percent of the 5 cars in South Dakota?</p> <p>6 MS. LEITZKE: I'm not really following your question. 7 I guess when weights and measures goes out and checks my pumps, 8 that's a positive because they are making sure that we are 9 selling a true gallon for both us and consumers. That's what I 10 guess I'm...</p> <p>11 MS. HOWELL: Do you see the concern that we have that 12 it's looking like the state is endorsing 85 by sealing the 13 pumps and by testing the octane as we move forward and if 14 there's nothing on there that says anything about 85 being 15 maybe a sub regular octane or simply not recommended for most 16 vehicles, that the state is getting into an issue of not 17 notifying our citizens of a significant and pertinent fact?</p> <p>18 MS. LEITZKE: I'm going to try to answer that 19 question. I would go back to historical data and I'm talking 20 specifically about west of the 102nd meridian. We have sold 21 fuel there, I think gasoline started being sold in South Dakota 22 in around 1943, give or take a couple years. We have always 23 sold that there. Until just recently, I think everybody, 24 including the state, has always understood or believed that 25 that was legal. We have never had a warning, we have never had</p>	<p style="text-align: right;">137</p> <p>1 being mislabeled. So has your association taken any steps in 2 light of what's happened so far this year to reduce mislabeling 3 to make sure it doesn't happen again?</p> <p>4 MS. LEITZKE: We have worked with Dave Pfahler and 5 actually Dave has written a couple of articles for my 6 newsletter and we have passed on that information. Everything 7 that we have had available to us, we have passed it on so that 8 everybody is clearly aware of what the law is.</p> <p>9 MS. HOWELL: And then to just kind of take a real 10 departure here, this hasn't come up I don't think before today, 11 or at least previously today, but actually the majority of our 12 emergency rules that are in effect and the majority of the 13 proposed permanent rules relate not to octane but to record 14 keeping requirements as far as retailers, suppliers, 15 distributors. Does your association have any issues with any 16 of those requirements that we have enacted or are proposing?</p> <p>17 MS. LEITZKE: I think you might be referring to the 18 first three sections of these proposed emergency rules that 19 talk about the bill of lading that must be with the retailer, 20 wholesaler, all the way up to the refiner, and no, we do not 21 have a problem with that.</p> <p>22 MS. HOWELL: Thank you.</p> <p>23 MR. GLODT: Thank you, Dawna, very much for your 24 expertise and time. With that, are there any other questions 25 or any other commenters? Anybody is welcome.</p>

85-Octane Rules Hearing

<p style="text-align: right;">138</p> <p>1 MR. MOYLE: Gil, G-I-L, Moyle, M-O-Y-L-E. Guys, what</p> <p>2 we are really here about is some mislabeling issues, as you</p> <p>3 addressed, and that's really how this all got started and we</p> <p>4 did talk about this. But what's really the problem, 98 percent</p> <p>5 of what we are really here for today is we want to keep western</p> <p>6 South Dakota in product, okay? These guys, I thought they did</p> <p>7 a really, really nice job showing where the gasoline that</p> <p>8 supplies western South Dakota is manufactured. And that</p> <p>9 standard -- the way they manufacture products is not unlike a</p> <p>10 lot of different products, could be a car, it's a standard,</p> <p>11 like a UL listing, it's an ASTM listing, a standard.</p> <p>12 So what they do, all these guys manufacture to that</p> <p>13 level, and if we want access to that product, we are going to</p> <p>14 have to decide whether or not we are willing to live with that</p> <p>15 standard. Now, the good part is in a year and a half, we are</p> <p>16 going to have a new standard, and these guys have already</p> <p>17 committed to manufacturing to whatever the ASTM comes up with;</p> <p>18 so that's really, really important.</p> <p>19 Now, when it comes to the labeling, all these states</p> <p>20 where our tourists come from, and they come in from that west</p> <p>21 side or they are going out and coming back in, and all of a</p> <p>22 sudden they start seeing warning labels on our dispensers, it's</p> <p>23 going to look like, South Dakota, you guys are selling a sub</p> <p>24 what, you know, that would be like telling McDonalds you can't</p> <p>25 call your Big Mac Big Mac, you have to call it Sub Mac or maybe</p>	<p style="text-align: right;">140</p> <p>1 don't call them up and say, by the way, can I go ahead and pull</p> <p>2 for the next month, because that's not the way it works. They</p> <p>3 want rateable gallons every single month.</p> <p>4 So now, if I go over here and I set up supply, that</p> <p>5 means I can't go here because then I gotta always buy it from</p> <p>6 here. That's going to take another 15, 20 cents a gallon at</p> <p>7 least. We don't want that. They don't have enough product for</p> <p>8 me anyway. So then I gotta go to Billings or I gotta go to</p> <p>9 Casper, I gotta figure out a way to get product up and down</p> <p>10 that circuit, and the minimum, it just costs a minimum of five</p> <p>11 to 10 cents a point every time you do that, right. What we are</p> <p>12 going to do is we are gonna automatically add five, 10, maybe</p> <p>13 15 cents a gallon just by upgrading that deal. Or we can put</p> <p>14 warning labels on and then the people coming into South Dakota</p> <p>15 are going to think, well, what kind of gas are these guys</p> <p>16 selling? It's just 50 miles across the line from where I'm</p> <p>17 marketing right now.</p> <p>18 Now, with regard to supply, the way our supplier does</p> <p>19 it, they have these codes they use when you go to pull, they</p> <p>20 have you on green zone, they have you on yellow zone, they have</p> <p>21 you on red zone. Red zone is how tight the product is. When</p> <p>22 you are on red, that means you are almost out. They allocate</p> <p>23 you can only take so many gallons a day, not just a week or not</p> <p>24 just a month, you can only pull so many that day, and by the</p> <p>25 way, we already know when that load is coming in. Sometimes</p>
<p style="text-align: right;">139</p> <p>1 you have to put a label on it that says see your doctor before</p> <p>2 you eat this, okay? Well, guess what? I think if we do like</p> <p>3 the rest of the states in this area do, we put the appropriate</p> <p>4 labeling in and we have weights and measures help us all to</p> <p>5 make sure everybody is selling the proper product, we catch the</p> <p>6 people that aren't doing it right and then we put the right</p> <p>7 penalties in place to keep it from happening again.</p> <p>8 But I can't stress enough about -- I have trucks</p> <p>9 today, all the time, that run all the way 400 miles to</p> <p>10 Billings. Otherwise there is not enough premium gasoline for</p> <p>11 all those bikers this week, okay? It's not going to happen.</p> <p>12 Now, if I have to go do that, do you know how much it costs to</p> <p>13 go up here? It costs 20 cents a gallon, and if we write a rule</p> <p>14 that eliminates up to 70 percent, could be 100 million gallons,</p> <p>15 that's going to be 100 million gallons at 20 cents, that's if</p> <p>16 we don't get a price spike by things being very, very short.</p> <p>17 When you get short, you get price spikes, that's just what</p> <p>18 happens.</p> <p>19 If I come from Rapid City all the way over to Sioux</p> <p>20 Falls, that's another 16, 18 cents a gallon, depending on the</p> <p>21 price of diesel fuel. By the way, I don't have any allocation</p> <p>22 in Sioux Falls; so now I gotta figure out a way to get</p> <p>23 allocation. The way oil companies sell you gasoline, it's all</p> <p>24 rateable, it's like no, if you buy X amount of gallons at that</p> <p>25 terminal, you gotta buy it every year at that terminal. I just</p>	<p style="text-align: right;">141</p> <p>1 it's coming in at ten o'clock at night, sometimes it's coming</p> <p>2 in at two in the morning, depending on how many trucks are</p> <p>3 there, and yes, I have had stations already run out of gas this</p> <p>4 year. All right? Already out of gas, not completely out of</p> <p>5 gas, I have one product or another product or two products so</p> <p>6 not completely out, but I've had products run out.</p> <p>7 So there is real shortage problems out there and</p> <p>8 that's with access to all this supply. You take this supply</p> <p>9 out of the chain, I think you could really cause some havoc. I</p> <p>10 know you did have some questions for Dawna. Maybe I could help</p> <p>11 you with some of those.</p> <p>12 MS. HOWELL: Do you want to maybe just for the record</p> <p>13 state who you represent?</p> <p>14 MR. MOYLE: Moyle Petroleum.</p> <p>15 MR. GLODT: I don't want to ask the same questions I</p> <p>16 have already asked of everybody. What percentage of your fuel</p> <p>17 comes from out of state right now? Maybe I should say on</p> <p>18 average in a year, what percentage of your gasoline and fuel is</p> <p>19 having to be shipped in from out of state?</p> <p>20 MR. MOYLE: Well, I buy 100 percent of my fuel from</p> <p>21 out of state. How much of it comes on pipeline versus with a</p> <p>22 truck?</p> <p>23 MR. GLODT: What percentage are you trucking?</p> <p>24 MR. MOYLE: I'd say by truck, in the summertime, less</p> <p>25 than five percent, but it's just barely just in time. I give</p>

85-Octane Rules Hearing

<p style="text-align: right;">142</p> <p>1 these guys credit, they do a great job, they got a great fuel</p> <p>2 management system that keeps other people from coming in and</p> <p>3 getting my fuel, but it's less than five percent.</p> <p>4 MR. GLODT: How short is your margin or allocation at</p> <p>5 that Rapid City terminal?</p> <p>6 MR. MOYLE: It's tight, I can't take one gallon more</p> <p>7 than I took last year, even if my sales are up.</p> <p>8 MR. GLODT: What would the impact be of let's say</p> <p>9 there's 50 percent less product available to you through that</p> <p>10 pipeline, if we ban 85-octane in South Dakota, what's the</p> <p>11 impact going to be to your business?</p> <p>12 MR. MOYLE: It would be huge, I would have to go out</p> <p>13 and find a fleet of 50 trucks to run overnight, and it would be</p> <p>14 a cost of probably 25, 30 cents a gallon to the consumer for</p> <p>15 the extra freight, transportation.</p> <p>16 MR. GLODT: Is the supply in Billings adequate when</p> <p>17 you do have to travel out of state or do they ration as well?</p> <p>18 MR. MOYLE: Unless they have a refinery problem, they</p> <p>19 are adequate, they are good. Very good.</p> <p>20 MR. PFAHLER: I do have a question. I think this is a</p> <p>21 fair question for the marketers because kind of what I'm</p> <p>22 hearing is that you really don't want to differentiate between</p> <p>23 85 and 87-octane, the 85 is, can be an ASTM -- can meet the</p> <p>24 ASTM standard, but I think what we have heard, I think what</p> <p>25 people know is that 85-octane fuel is typically a cheaper fuel</p>	<p style="text-align: right;">144</p> <p>1 to try to meet, they have already told you that they are not</p> <p>2 capable, the lines today are not capable of running both</p> <p>3 products; so we already know, and the tankage is not capable in</p> <p>4 our open forum, the tankage isn't capable either. So we</p> <p>5 already know we are going to have to run over here and find</p> <p>6 premium somewhere if we want to blend up, and another thing,</p> <p>7 these oil companies, they are very cautious. They aren't going</p> <p>8 to tell you that they are not going to stay here or they will</p> <p>9 stay here. What they are going to do is they are going to wait</p> <p>10 for you to write the rules and then they are going to make a</p> <p>11 decision. They are going to wait for you to name their</p> <p>12 product.</p> <p>13 You gotta understand these guys have brands. You take</p> <p>14 a brand like an Exxon, a Mobil, a Sinclair, it could be a</p> <p>15 Cenex, it could be a BP. If you start telling them what they</p> <p>16 have to call their products, even though they feel that they</p> <p>17 meet the standard, they may say that's too damaging for my</p> <p>18 brand and I'm not sure I can do that. So then you have to</p> <p>19 figure out are you willing to pay 25 cents a gallon more</p> <p>20 because of this labeling, of which the consumer would</p> <p>21 understand in Rapid City, he goes all over the place here, it's</p> <p>22 the exact same gas, right? And it says regular.</p> <p>23 So we are going to create some special little deal</p> <p>24 here, this one little island right here, and I can tell you</p> <p>25 what happens when you create little islands, there's going to</p>
<p style="text-align: right;">143</p> <p>1 to manufacture, it is a lower octane, but what you are</p> <p>2 saying -- let me just ask the question. Is it fair to compare</p> <p>3 85-octane and 87, call them both regular, have absolutely no</p> <p>4 indication on the 85-octane that no engine manufacturers today</p> <p>5 are manufacturing engines that recommend that fuel? Is that a</p> <p>6 fair comparison?</p> <p>7 MR. MOYLE: You know, over the history of time,</p> <p>8 manufacturers and end users and parts that are supplied to</p> <p>9 manufacturers have debated what in the world are we going to do</p> <p>10 and what are we going to supply and what do I think I need to</p> <p>11 do and what not. I don't care what your business is, the UL</p> <p>12 listing maybe for the electrical stuff, the appliances, it</p> <p>13 takes all the argument out of it; so when the manufacturer goes</p> <p>14 and says -- what if the car manufacturer said next year I want</p> <p>15 91, he doesn't really care about that.</p> <p>16 What the manufacturer of gasoline, the refiner does,</p> <p>17 he says, this is the ASTM standard I have to meet in Colorado,</p> <p>18 Wyoming, Montana, Utah, Idaho. I supply millions of people</p> <p>19 with this gasoline and it meets the standard, okay? It doesn't</p> <p>20 really matter what the car manufacturer says because that's</p> <p>21 their choice to produce a car that runs on whatever. All I</p> <p>22 have to do is meet the manufacturing standard; that's what they</p> <p>23 are going to do. That's what these guys do, they meet the</p> <p>24 manufacturing standard.</p> <p>25 If we want to create some different standard for them</p>	<p style="text-align: right;">145</p> <p>1 be shortages and there's going to be spikes and there's going</p> <p>2 to be challenges. And we are going to do this all for what</p> <p>3 reason? We have been doing this for 50 years, okay, 50 years,</p> <p>4 and how many administrations have we been through where we have</p> <p>5 done this? Dave, you have been through a number of them.</p> <p>6 So I don't see any reason for us to get in a hurry, to</p> <p>7 try to excite the public, excite the tourists, create shortages</p> <p>8 and create price spikes when we know the standard is going to</p> <p>9 come out in a year and a half. We know the refinery has</p> <p>10 already committed to meeting whatever that standard is. This</p> <p>11 just all goes away, and all we have to do is write some rules</p> <p>12 that say let's just keep it the way it is, and we can base this</p> <p>13 on science, it's not the oil company, it's not the alcohol</p> <p>14 company.</p> <p>15 With the ethanol guys, I can remember when I went</p> <p>16 through this exact same deal on labeling. We said no, all we</p> <p>17 want to do is put contains 10 percent ethanol, that's all we</p> <p>18 want. At the time there were a lot of people saying check your</p> <p>19 owner's manual, check this deal. I'm telling you, the alcohol</p> <p>20 guys, the ethanol guys went through the roof, right, and I</p> <p>21 didn't like it either because I didn't want that on my</p> <p>22 dispensers, contains 10 percent ethanol. Now it says contains</p> <p>23 85-octane, okay. That's what I think we should do. At the 102</p> <p>24 meridian -- you asked about all the economics of the guys in</p> <p>25 Pierre and Kadoka and all that.</p>

1 Well, for 50 years the economics have been built on
2 this. You didn't haul, none of the brand guys could haul that
3 gasoline, wasn't allowed by the suppliers, you couldn't haul 85
4 into an 87 region, it was against your contract, can't do it.
5 By the way, the economics are set up that since you have such
6 big refineries and big pipes and lots of volume on the east
7 side, the economics of the gasoline typically would flow all
8 the way past Kadoka anyway. A lot of times it would flow past
9 Wall. So the economics, those guys have been under the exact
10 same economics for 50 years; so by not changing anything, you
11 are not changing anything. If you change something, then you
12 are changing something and you run the risk of creating an
13 economic thing that people invested 10, 15 years ago and now
14 you are changing it.

15 MR. PFAHLER: You don't look at the sale of 85-octane
16 throughout the Rocky Mountain states as an artifact of engines
17 manufactured prior to 1984? Do you think that the sale of
18 85-octane only in the Rocky Mountain chain is an artifact of a
19 time gone by? I think that term was used earlier, and that do
20 you have any feel for that changing in the future?

21 MR. MOYLE: I do, and I couldn't agree with you more,
22 Dave, is that I am really excited that ASTM has undertaken this
23 deal. It's a real neat deal, we may get closer to
24 standardizing the product. It's exciting, right? Normally
25 what we do is we study stuff before we make laws. Before we

1 change the rules, we normally go out and study it, right?
2 That's the way we do it in our legislative process.

3 COURT REPORTER: Whoa. You are talking like 400 miles
4 an hour.

5 MR. MOYLE: We normally don't change rules and then
6 study it afterwards. I would say we study this and then make
7 the rules when the ASTM comes out. If we have to have interim
8 rules that get us by, which really don't change anything that
9 we have been doing, doesn't change the economics, doesn't
10 jeopardize supply, doesn't jeopardize price, doesn't change the
11 rules for anybody that's been out there competing for the last
12 50 years, and then if we can just get through this and it's
13 really just basing it on science, it's not emotion, it's on an
14 ASTM standard that these guys manufacture to.

15 MR. PFAHLER: Thank you.

16 MR. GLODT: Maybe a question to allow you to clarify.
17 Right now your stations sell 87-octane with ethanol, 88 mid
18 grade with ethanol and 91 octane premium with no ethanol.
19 There is some that say why can't -- you are doing it now, you
20 are not selling 85 now, why can't you continue to do what you
21 are doing now into the future?

22 MR. MOYLE: Well, if this pipeline company right here,
23 Rocky Mountain, and if this pipeline company right here,
24 Seminoe, if they allow those guys to ship and they allow them
25 to tank and they allow them to do that without having huge fees

1 associated with it, that's good, but right now they have not
2 said that they are willing to do that. So what they have said
3 they are willing to do is ship the 81.5 or the 82, depends on
4 what that settles out at, that's what they are going to be
5 shipping here.

6 So if they are not allowed to ship both of them,
7 because the way the pipeline guys were explaining it to you, if
8 I have got a pipe this big and I run one big batch of this,
9 then it's more efficient. If I gotta run one little batch of
10 this and one little batch of this, they might not -- I know
11 they don't have the tankage, they have already done the study,
12 they don't have the tankage right now. They don't have the
13 capability today to do that. If they are going to look at the
14 standard in a year and a half, there's not going to be anybody
15 going to build out infrastructure for possibly a year and a
16 half and then they are going to change it.

17 MR. GLODT: One of my last questions, by not selling
18 85 currently, what is the impact to fuel prices to the
19 consumer?

20 MR. MOYLE: Well, I think that there's always going to
21 be two things that impact the price of fuel to the consumer.
22 It's the cost of the product going in, which is the price of
23 oil, the efficiency of the refinery that manufactures that oil
24 into gasoline and then the efficiency of the transportation
25 system that gets it to the retail outlet or to the terminal or

1 transportation to get it to the terminal. That's what affects
2 the price of gasoline; the input costs, which is oil, the
3 manufacturing, which is refining, the transportation, which is
4 typically pipeline, and if you can't run it through the pipes,
5 because they are not allowing them to ship it, then you will
6 have to go get it by truck.

7 MR. GLODT: Is the 87-octane with ethanol blend more
8 expensive than pure 85?

9 MR. MOYLE: Exxon doesn't allow the sale of 85 in the
10 state of South Dakota. I don't buy any. Yeah, when the state
11 came out and said you are doing something illegal, Exxon
12 immediately shut all sales off, period. They don't do illegal.

13 MR. GLODT: But then can't the argument be made that
14 we are not allowing 85 now and things seem to be working pretty
15 well?

16 MR. MOYLE: But what's going to happen, Jason, see
17 this system, if and when they convert to 81.5, see this little
18 part here, our only hope is we get to tap into this, and if
19 they are making 81.5, they can make it up here in Billings,
20 they will have that product up there, they just don't have the
21 physical capability, they don't own these pipes; so they don't
22 have the physical capability, if Seminoe says, I'm sorry, we
23 are not shipping 85, they can't ship it. They have no way of
24 getting it here. So then I have to go in a truck all the way
25 up to Billings to go get that and then I add 25 or 20 cents,

85-Octane Rules Hearing

<p>150</p> <p>1 whatever, to the cost. That's just the transportation, but</p> <p>2 then I gotta put another five to 15 cents of premium in it to</p> <p>3 bring it up to the 87 spec.</p> <p>4 MR. GLODT: Isn't it true to say that, in light of the</p> <p>5 refiners shifting to a lower-base octane, even if we can get</p> <p>6 some 85, the volume will be reduced at the Rapid City terminal?</p> <p>7 MR. MOYLE: Yes. And you know, the refineries</p> <p>8 certainly are trying to be as efficient as possible. These</p> <p>9 refiners are very, very small refineries. It takes 10 or 20 of</p> <p>10 them to make the size of just one down on the gulf coast. So</p> <p>11 they really are small, inefficient refineries. Now, the good</p> <p>12 part is they are still here so we have access to them so we all</p> <p>13 have gasoline. That's really a handy thing. If we continue to</p> <p>14 have access to them, I think it's going to be the best deal for</p> <p>15 the people, especially western South Dakota, because that's</p> <p>16 really what we are talking about 98 percent of this, we are</p> <p>17 talking about gasoline for western South Dakota, having access</p> <p>18 to the supply, to the manufacturers that actually make it and</p> <p>19 trying not to drive up the costs 10, 15, 25 cents a gallon by</p> <p>20 having us go to some product, that we can stand by this ASTM</p> <p>21 standard that says all these states, Denver, Colorado, Fort</p> <p>22 Collins, these are big cities, Salt Lake City, Utah, Casper,</p> <p>23 Billings, Bozeman, all these guys are using this product and</p> <p>24 they are using it fine, everything is working great. It's</p> <p>25 going to change in probably a year and a half anyway. I don't</p>	<p>152</p> <p>1 reason for the discrepancy between the figures that I gave you</p> <p>2 and maybe what you heard otherwise. But we will address the</p> <p>3 outages both in Watertown and Sioux Falls and for both not only</p> <p>4 the end grade but also the diesel as well.</p> <p>5 MR. GLODT: Thank you very much. Anyone else? For</p> <p>6 those of you who decided not to provide public comment today,</p> <p>7 you have the opportunity to do so by written comment. I'll let</p> <p>8 Jenna explain more about that process and how to do it as we</p> <p>9 conclude this meeting.</p> <p>10 MS. HOWELL: As I said before, if you want to go to</p> <p>11 our web site, which is dps.sd.gov, we have all the</p> <p>12 instructions, we have printouts on the table, I think there are</p> <p>13 still some left, guidelines to public comment. It provides our</p> <p>14 street address if you want to do it via snail mail. We also</p> <p>15 have an e-mail address if you want to provide electronic</p> <p>16 comment. Thank you.</p> <p>17 MR. GLODT: That concludes the hearing.</p> <p>18 (Whereupon, the proceedings were concluded at 3:20</p> <p>19 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>151</p> <p>1 know why we want to change the rules and then study it. I say</p> <p>2 we study it and then change the rules.</p> <p>3 MS. HOWELL: I don't want to end on a really</p> <p>4 unexciting note, but to bring up what I brought up with Dawna,</p> <p>5 actually most of the rules we are proposing relate to record</p> <p>6 keeping, documentation, octane certification. Do you have any</p> <p>7 objections or concerns about those?</p> <p>8 MR. MOYLE: No. We are comfortable.</p> <p>9 MS. HOWELL: Thank you.</p> <p>10 MR. GLODT: Thank you, Gil, for your time and</p> <p>11 expertise.</p> <p>12 MR. GLODT: Any further comments? Briefly, yes.</p> <p>13 MR. BYERS: There has been considerable discussion</p> <p>14 about supply today, and we will certainly address that in more</p> <p>15 detail in our written comments, but given the fact that there</p> <p>16 were some statements made sort of I would say questioning the</p> <p>17 validity of the figures that I had given earlier, I think I</p> <p>18 would be remiss not to address Andy's comment about there being</p> <p>19 no product today. I checked into that and what in fact</p> <p>20 happened was there was a spot outage. It occurred from ten</p> <p>21 o'clock last night to one o'clock in the morning, and we do our</p> <p>22 best to make sure that when there are those spot outages that</p> <p>23 they occur at a time that is not a high traffic area. So I</p> <p>24 would suggest that a three-hour spot outage is not a day in</p> <p>25 which we loaded no product, and I think that's part of the</p>	<p>153</p> <p>1 <u>CERTIFICATE</u></p> <p>2</p> <p>3 STATE OF SOUTH DAKOTA)</p> <p>4) ss.</p> <p>5 COUNTY OF HUGHES)</p> <p>6 I, Carla A. Bachand, RMR, CRR, Freelance Court</p> <p>7 Reporter for the State of South Dakota, residing in Pierre,</p> <p>8 South Dakota, do hereby certify:</p> <p>9 That I was duly authorized to and did report the</p> <p>10 testimony and evidence in the above-entitled cause;</p> <p>11 I further certify that the foregoing pages of this</p> <p>12 transcript represents a true and accurate transcription of my</p> <p>13 stenotype notes.</p> <p>14 Dated this 25th day of July 2012.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Carla A. Bachand, RMR, CRR Freelance Court Reporter</p>